THE HIGH COURT

FAMILY LAW

[2012 No. 3M]

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996

BETWEEN:

S. M.

APPLICANT

-AND-

H. M.

RESPONDENT

JUDGMENT of Mr. Justice Twomey delivered on 26th October, 2017

Summary

1. This is an interlocutory hearing, and so this Court does not have a full factual background, but nonetheless during the course of the hearing there were a number of issues raised which were of *prima facie* concern to this Court, namely:

> • the incurring by the wife in these matrimonial proceedings (Mrs. M) of fees of €635,000 for a judicial separation, which was granted by MacMenamin J. on the 29th July, 2010;
>
> • notwithstanding the fact that there is a court order that Mrs. M could pay €200,000 in legal fees (as a result of an application by her lawyers) pending the review of those legal fees as part of the taxation process, some €436,000 extra appears to have been paid by the wife to her lawyers, even though she was described by MacMenamin J. as someone who was not 'financially minded' and she has averred in an affidavit for this hearing that she does not have enough money to buy a house;
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> • as part of the taxation process, Mrs. M, although acknowledging that the level of fees would make most people '*gasp in horror'*, she nonetheless stated that did not wish to have them reduced, even though this runs counter to her own financial interests.

2. These issues were raised by Mr. M in the interlocutory hearing before this Court which dealt with motions issued by Mr. M in relation to proceedings issued by him, in which he seeks a divorce from Mrs. M. In these motions he seeks copies of documents in the possession of his wife and/or her lawyers and recordings of hearings before the High Court and the Taxing Master.

Background facts

3. In support of his motions, Mr. M refers to the fact that Mrs. M is seeking financial provision from Mr. M and that Mrs. M is not a "financially minded person" when it comes to, *inter alia*, the legal fees which she is paying. This description of Mrs. M arise from the judgment of MacMenamin J. dealing with their judicial separation (*HM v SM and The P. Trust Ltd*, unreported, High Court, 29th July, 2019). At paragraph 54 of that judgment, he stated:

> "A further duty of a court is to ensure that the resources allocated to either spouse are protected from mismanagement. In this context there are a number of salient features.
>
> First, it is clear that [Mrs M], objectively speaking, is not a "financially minded" person. This observation is not made in any critical sense. Nor is it made by any process of invidious comparison with [Mr. M] who comes very much within that description. By way of illustration, the applicant appears to have no specific recollection of the substantial financial transactions to which she herself was a party. She did not have any great appreciation of the potential ultimate value of G. had the flotation actually succeeded."

The first motion seeking discovery of documents relating to legal fees

4. The first motion is dated 20th July, 2017, and in it Mr. M seeks an order for discovery of all documents between Mrs. M and her solicitor relating to her legal costs and the taxation of them between 2011 and 2017.

5. Mr. M has raised issues of *prima facie* concern to this Court regarding both the level and payment of these legal fees, *albeit* that this Court, at this stage in the proceedings, is not in a position to make any findings of fact in relation to these issues. The issues of concern will be dealt with in turn.

I. Level of legal costs for a marriage break-up

6. First, as a general point, there is something profoundly depressing about witnessing a couple who have had the misfortune of having a marriage break-up, undergo the double misfortune of having to pay what is, to any normal person, an inordinate amount of money in legal fees, in this case €635,000, even it is caused by the unreasonableness of one or both of the parties.

7. In this case, Mrs. M's fees were €635,000 for the judicial separation alone, as the costs of the divorce are separate (*albeit* that Mr. M. provided uncontroverted evidence to the Court that the Taxing Master reduced these fees by €127,000, which would leave the fee in the region of €508,000 for the judicial separation).

8. As the level of legal fees charged to clients, or permitted by the Taxing Master, is not a matter in which the courts are normally involved and particularly as family law proceedings are held 'in camera', this Court is not in a position to say whether this level of fee for a judicial separation is most unusual.

9. The decision of the Taxing Master in this case was subject to an application by Mr. M for review by Noonan J. in the High Court in a case reported as *H.M. v S.M. and the PTC Limited* [2015] IEHC 727. This application was unsuccessful and the High Court decision

is currently under appeal to the Court of Appeal

10. For his part, Mr. M believes that the reduction by the Taxing Master should be greater. Mr. M has pointed to the fact that he was legally represented for the separation proceedings and while Mrs. M was charged €635,000, he was charged €127,038, a fifth of Mrs. M's fees. Mr. M is no longer legally represented and in light of the costs involved, it is perhaps no great surprise that he is now a lay litigant. It is to be noted that it is not just Mr. M who is critical of the legal fees incurred by Mrs. M in the separation proceedings, since MacMenamin J. was critical of the level of legal costs incurred in the couple's judicial separation and at paragraph 57 of his judgment of 29th July, 2010 (*H. M. v. S. M. and The P. Trust C. Ltd*), he states:

> "… it is estimated that the applicant's legal costs by the conclusion of this case will be a multiple of the respondents by a factor of four. The Supreme Court has commented on the level of costs in cases of this type. Very substantial sums of money are involved here as costs. Other than having received a broad outline from her solicitor at the outset of the proceedings, the applicant took no steps to ascertain her own potential financial exposure as to costs. She is not to be criticised for placing herself "in the hands of her lawyers", but nowadays it might be expected that any client would seek some form of ongoing information as to the costs which primarily she would be incurring. In this context I do not think there was any real justification for the bringing of two interlocutory motions, one seeking to bar the husband from the family home. I do not think such a radical measure was warranted."

It is important to note that MacMenamin J. also attributed blame to Mr. M for the high level of legal fees, since at paragraph 84 of the same judgment, he states:

> "There was late provision of financial information from the husband. This added to the length of the case by a factor of three or four days. The husband chose not to retain an accountant. This again would have shortened the case and reduce costs."

11. In this regard it is also important to record what Noonan J. stated regarding the conduct of Mr. M when he was asked to review the decision of the Taxing Master on the application of Mr. M. Thus in *H.M. v S.M. and the PTC Limited* [2015] IEHC 727 at paragraph 23, Noonan J. stated:

> "It is in my opinion appropriate that I should express my view as to the manner in which this application was conducted by [Mr. M]. As I have noted, [Mr. M] made extremely serious allegations against the solicitor for the costs. Not only were these unsupported by evidence but they were in effect flatly contradicted by the client whose bill is the subject of the taxation, [Mrs. M]. I've already alluded to the fact that the order of MacMenamin J. was unusual and quite possibly unique. Indeed, the taxing master in one of his rulings stated that he had never encountered such an order."

12. Having expressed concern about the level of fees, in a subsequent hearing on the 22nd July, 2011 (*HM v SM and P Trust C Ltd*), MacMenamin J. held at page 4 of his judgment that, in light of Mr. M's obligation to make provision for Mrs. M:

> "I think he has a legitimate interest in seeking to ensure that the costs are minimised."

For this reason, MacMenamin J. then made what has been described by Noonan J. on the 25th November, 2015 as an '*unusual and quite possibly unique'* order (at paragraph 24 of his judgment), since he gave Mr. M the right to make representations to the Taxing Master in relation to the taxation of Mrs. M's costs, because he had an interest in those costs not being excessive. MacMenamin J. ordered that Mrs. M's costs be taxed. On an application by counsel for Mrs. M, that she should be free to pay her lawyers some fees, he ordered that €200,000 could be paid by Mrs. M to her legal advisers.

13. It is important to note that as matters stand, the Taxing Master has found that approximately €508,000 worth of legal fees were correctly charged and the High Court has rejected Mr. M's application for this decision of the Taxing Master to be reviewed. It follows that as matters stand some €508,000 has been properly charged in legal fees. This is an inordinate amount of money for anyone to have to pay for what is a daily occurrence in this country, namely court ordered marriage break-ups. A fee of €508,000 would involve 1,693 hours of work based on the figure of €300 per hour which was used by the Taxing Master in his review of those fees, if all fees were charged on this basis (albeit that not all the fees charged were charged on a time basis). Considering that these are the legal fees for just one party to the judicial separation (and it excludes the costs of the divorce), it would mean that if this level of fees were replicated by the other party, it would cost upwards of €1 million in legal fees for a couple to separate. This is in a country where it might take a person on the average wage close to his/her lifetime to earn that sum, after tax. Quite apart from the fact that if couples knew that it could cost their family that much, a lot more effort might be made by couples to engage in mediation or other forms of dispute resolution, it appears to this Court that on the basis that all of these charges were validly incurred, there is a serious flaw in our legal system if that system permits and facilitates the incurring of this level of fees and this amount of time in the separation of a married couple. If one assumes that both parties by their unreasonable conduct contributed to the costs, then the solution may be that rules have to be devised which protect spouses from their own legal mistakes, by putting a limit of the amount of court time or fees that can be incurred in a marriage break up. In this regard, it is interesting to note that our neighbouring jurisdiction of England & Wales has considered whether in certain cases trials should be limited to two days with a costs cap of £50,000 (see the recommendations of Lord Justice Jackson in his *Review of Civil Litigation Costs: Final Report*). Such an approach might have benefited both parties to this litigation, since to quote Fennelly J. in *Ryanair plc v. Aer Rianta* [2003] 4 IR 264 at 275:

> "The public interest in the proper administration of justice is not confined to the relentless search for perfect truth. The just and proper conduct of litigation also encompasses the objectives of expedition and economy."

A focus on '*expedition and economy'* in court procedures, particularly in family law, might avoid a situation in the future where it could cost a couple €1 million to part ways.

The lawyers' view of the costs

14. In her affidavit of 15th September, 2017, to this Court, Ms. Downes deals with Mr. M's allegation that Mrs. M has, by her payment of €635,000 to her lawyers, breached the court order/undertaking that she could pay €200,000 to her lawyers. In the context of the level of fees incurred by Mrs. M, it is relevant to note that in defending the allegation that an undertaking/court order might have been breached by Mrs. M, Ms. Downes avers that:

> "On the issue of relevance, I say that even if a breach is established (which I believe it won't, but which for the purposes of this application I am willing to let the Court assume to be the case), any such breach is at this stage most unlikely to attract the opprobrium or criticism of the Court. The Taxing Master **only** reduced the eventual total bill by the sum of

€127,000 and [Dermot Simms Solicitors] element of the bill by €55,000." [emphasis added]

15. This Court would reject this characterisation of a reduction of €127,000, which is three to four times the average wage in Ireland, as something which is insignificant or so small as not to be a factor in assessing whether there has been a breach of undertaking. Even if one was dealing with a genuinely small reduction in the amount of legal fees, say by hundreds of euro, this would not detract from the importance of litigants and their lawyers complying with court orders/undertakings.

16. Accordingly, the first issue of concern in this case is one that this Court shares with MacMenamin J., namely a concern at the level of legal fees that have been charged for a judicial separation. It is relevant to note however than when MacMenamin J. expressed his concerns, the Taxing Master had not given his verdict on whether the fees which were charged were appropriate. Now that the Taxing Master has concluded that some €508,000 was properly charged, this Court's concern would be more specific than MacMenamin J.'s, namely it is a concern that the legal system for dealing with marriage break-ups permits this level of fees to be validly incurred. At an interlocutory stage, this Court cannot draw any conclusion about whether one or both parties to the litigation were unreasonable and thus a factor in this level of fees. No doubt both parties believe it was the other party who was being unreasonable. However, what is concerning is that in highly personal and acrimonious disputes in family law, where children and loving relationships are pulled asunder, litigants are not protected from themselves or more accurately from their own unreasonableness to prevent them incurring inordinate legal fees. This unreasonableness, although not justifiable, is nonetheless understandable in the maelstrom of anger, emotion and disappointment which can arise on the break-up of a marriage. Protecting family law litigants from their own unreasonableness would also have the advantage of protecting court resources from being wasted.

II. Order that €200,000 be paid by Mrs. M but €636,000 actually paid by her

17. The second issue of concern is that, despite the judgment and Order of MacMenamin J. on the 29th July, 2010, to the effect that a sum of €200,000 could be paid by Mrs. M to her solicitors:

> "The Court doth direct that the sum of €200,000 can be paid to Legal Advisers for [Mrs M] on account without prejudice to the rights of either of the parties vis a vis the taxation. "

Mrs. M. has in fact paid €636,000 over to her solicitors. This is some €436,000 in excess of the amount ordered by MacMenamin J., yet at the same time in her affidavit of 23rd November, 2016, at paragraph 12, Mrs. M complains that she does not have enough money to buy a house. This is when the average price of a house in Dublin is somewhat less than the €436,000 extra which she has paid to her solicitors. While MacMemanim J. described Mrs. M as not being 'financially minded', this was in the context of her not fully appreciating the potential ultimate value of a company which was due to be floated. This however does not necessarily explain why she would pay €436,000 more than she had to, to her solicitors, when she was at the same time saying she did not have money to buy a house. This needs to be clarified.

Affidavit of solicitor apparently conflicts with affidavit of means of her client

18. In her affidavit, Ms. Clare Downes, solicitor for Mrs. M and the principal in Dermot Simms Solicitor, deals with Mr. M's claim that Mrs. M has breached the Court Order/Undertaking that only €200,000 be paid to her firm. She avers that:

> "… Mr M has identified the transfer of monies by Mrs M to the [Dermot Simms Solicitors'] client account and misunderstood those payments to be one and the same as payments of fees to DSS. These transfers, he says are *prime facie* evidence of a breach of the Order/Undertaking. This is denied. As the Court will understand payment of fees only occurs when money is transferred from the Client account (which are monies which are held to the order of, and belong to, the client) into the Office account."

19. In summary therefore, arising from a request by her Counsel that she be allowed to pay her lawyers €200,000, notwithstanding the taxation ordered by the High Court, MacMenamin J. ordered that Mrs. M could pay €200,000 in legal fees to Dermot Simms Solicitor. Despite this Order, she paid €436,000 in excess of this sum. Some €260,000 of this excess was paid even before the taxation commenced. At the same time Mrs. M complained that she cannot afford a house. Her solicitor's explanation is that the money paid to the firm is still Mrs. M's money, since it is held in a client account.

20. However, while Ms. Downes avers that Mr. M does not understand that money held in the firm's account is not the payment of fees, her own client's Affidavit of Means dated 9th June, 2017, also seems to operate under this same misapprehension, which she criticises Mr. M for having. This is because this Affidavit, which one assumes was prepared with the benefit of legal advice, has no listing under 'debts' of outstanding legal fees relating to Mrs. M's judicial separation. Thus, Ms. Downes' own client, Mrs. M, appears to believe, or have been advised, that that the money that Mrs. M has paid Dermot Simms Solicitor is in fact the payment of the fees for her separation and so not her money and thus there are no further fees due by her to her legal advisers. At the very least therefore there is an apparent inconsistency between the Affidavit of Means of Mrs. M and the affidavit of Ms. Downes regarding the money in the client account being Mrs. M's money, which needs to be clarified.

The significance of a breach of a court undertaking/court order

21. Finally, in this regard, in Ms. Downes' affidavit of 15th September, 2017, she avers, in relation to the allegation that Mrs. M has breached the court order of MacMenamin J and/or her undertaking to the Court, that:

> "Lastly, I say that even if a breach is established (which I believe it won't), the fact of the breach in and of itself is unlikely to inform the Court's attitude towards the issue of provision."

Quite apart from the fact that an affidavit is meant to deal with facts, rather than opinion, this Court takes very seriously any breach of a court undertaking/order and any such breach is vey much likely to inform the Court's attitude to the credibility of an applicant and therefore, notwithstanding Ms. Downes' averment, it could indeed impact upon this Court's view of the reliability of Mrs. M's evidence in her application for proper provision.

III. Claim fees paid directly by client when paid by solicitor from client a/c

22. The third issue of concern is that in the legal submissions which were made on behalf of Mrs. M. to Noonan J. in the application to review the Taxing Master's decision, it was stated that:

> "The fees of Peelo & Partners, Accountants were discharged directly by the client and as such are not amenable to taxation as they are not disbursements made by the Solicitor."

23. This submission by Mrs. M's lawyers relates to a sum of €36,656.95 which they say was paid directly by Mrs. M. to Peelo & Partners and which it was therefore argued should not be subject to review by the Taxing Master. That this was the position of Dermot Simms Solicitors is clear from the Taxing Master's Ruling No. 2 of 11th October, 2012, at page 38, where it is stated that the legal costs accountant on behalf of Dermot Simms Solicitors:

> "objected on the basis that the fees had in fact been directly paid by the client to the firm of accountants. On this basis I held that the fees had effectively been taxed by the client and that I did not possess jurisdiction to intervene."

However, on Mr. M's perusal of Mrs. M's bank statements he could find no such payment directly by her to Peelo & Partners. Mr. M raised this fact with Mrs. M's solicitor. Dermot Simms Solicitors replied by letter dated 9th June, 2017, and stated:

> "In relation to your query at paragraph 6 of your email of 23rd March, the full balance of Messrs. Peelo & Partners costs were discharged on Mrs M.'s instructions out of funds held in the Client Account."

In her affidavit of 15th September, 2017, Ms Clare Downes, the principal in Dermot Simms Solicitor, elaborated on this reply when she averred that:

> "I say that payment of professional fees to Mr Peelo were not encompassed by the taxation process which was confined to legal fees, and were a matter solely between Mrs M and Mr Peelo. The payment of those fees were not constrained by any Order or Undertaking. The fact that they were discharged out of the DSS client account is of no relevance as this is one and the same as Mrs M discharging them from her our own monies/ resources."

As a preliminary point, it is to be noted that in relation to this averment, Mr. Paul McCarthy SC (who has not acted for Mrs. M in all of her proceedings to date), did acknowledge during the hearing before this Court that the averment by Ms. Downes that the taxation process is confined to legal fees is not in fact correct.

24. In relation to whether Mrs. M paid the fees to Peelo and Partners directly or not, it is also relevant to note that Reynolds J. made an order on the 16th June, 2017, obliging Dermot Simms Solicitors to reply to Mr. M's question in his email of 23rd March, 2017. Mr. M's question was:

> "We understand that Mrs M discharged directly the Peelo and Partners invoice dated 14 July 2010 in the amount of €36,656.95. From reviewing Mrs M's bank accounts we were unable to discover from which account Mrs M discharged this invoice. Can you please provide the vouching documentation showing where this amount has been paid by Mrs M to Peelo and Partners?"

25. Under cover of its letter dated 23rd June, 2017, Dermot Simms Solicitor replied to this question as follows:

> "Please see letter Dermot Simms Solicitors to Applicant, 9th June 2017. Mr Peelo's costs were paid directly (a term used by the Taxing Master and not by this firm) in the sense that they were paid from Mrs. M's own funds held in the client account of Dermot Simms."

It is relevant to note that, at this stage in June of 2017, Dermot Simms Solicitors appear to be disowning the use of the description of Mrs. M as having 'directly' paid Peelo and Partners' costs, even though the reality is that this very term was used in their legal submissions to Noonan J.

26. When one considers Ms. Downes' averment on the 15th September, 2017, that the fees were paid out of her firm's client account, in the light of the submission to Noonan J. in 2015 that the fees to Peelo & Partners were discharged directly by the client, it is difficult to avoid the conclusion that the submission to Noonan J. gives the false impression that the fees were paid directly by Mrs. M to Peelo & Partners, with no involvement whatsoever of Dermot Simms Solicitors. However, the fees were in fact paid by Dermot Simms Solicitors to Peelo & Partners. The fact that the fees were paid out of the client account is not significant since it is common knowledge that all clients' outlay and counsel fees are paid by a solicitor out of the client account. This is because a solicitor would not, save in exceptional circumstances, pay a client's costs out of his personal funds i.e. his office account. It is also common knowledge that counsel's fees are invariably paid out of the client account and they are invariably subject to taxation. Accordingly, the suggestion in the averment by Ms. Downes that because the fees were paid out of the client account they were paid *'directly'* by the client, and so immune from taxation, is disingenuous to say the least and raises further concerns for this Court with not just the amount of legal fees paid by Mrs. M, but also the manner in which she paid them and more precisely the manner in which they were represented to have been paid, which led to them being excluded from a possible reduction on taxation (for the benefit of Mrs. M and indirect benefit of Mr. M.). This requires clarification.

IV. Client not seeking reduction in costs at taxation ordered for her benefit

27. The final issue of concern relates to the role of Mrs. M in the taxation of her legal costs. The background to the taxation is that Mrs. M had her legal costs taxed at the direction of the High Court because MacMenamin J. was of the view that as someone who was not a financially minded, she would benefit (and presumably Mr. M would also indirectly benefit) from the costs being independently reviewed. It is to be noted that as well as ordering the taxation of Mrs. M's legal costs, MacMenamin J. made Mr. M. liable for the costs of the taxation. At paragraph 7 of his judgment of 22nd July, 2011, (*HM v SM and P Trust C Ltd*) MacMenamin J states:

> "Thus, I am directing [Mrs M's] costs will be taxed, and that [Mr M] will be permitted to retain a costs drawer to make submissions to the Taxing Master in relation to the items of cost identified in the bill of costs which will be submitted by [Mrs M's] solicitor […] I recognise that Mrs M feels that Mr M is a 'control freak and this is yet a further aspect of his controlling nature. However, the truth of the matter is that he does have a legitimate financial instrument interest in these questions."

28. As previously noted, this taxation process led to a reduction of €127,000 in the bill. However what is unusual about this aspect of the case is that as part of the taxation process, which Mrs. M would or should have known could lead to a reduction in her legal bill, she sent an email on the 6th March, 2012, to her solicitor acknowledging that while on the one hand the level of the costs would make most people *'gasp in horror'* she nonetheless did not wish to *'contest'* the amount charged.

29. By sending this email therefore, Mrs. M was essentially arguing against her own financial interests (and also arguing indirectly against her husband's financial interests since she is seeking proper provision from Mr. M), but yet in favour of her solicitor's financial interests. It is no great surprise that her solicitor would produce this email in evidence during the taxation process and clearly this

was a significant piece of evidence which the Taxing Master could not ignore. The email is duly set out in full in his ruling (Ruling No. 2 dated 20th October, 2012) on the very first page of the ruling. The Taxing Master refers to the legal costs accountant's submission (Mr. McMahon) on behalf of Dermot Simms Solicitors in relation to this email in the following terms:

> "Initially, this taxation was commenced on 28 March 2012 with Mr McMahon stating that he would be relying on the presumption of reasonableness referred to at Order 99 Rule 11 (3) and citing the decision of Gannon J. In H v H High Court, (unreported) 2 December 1974, in that regard. It was asserted that, in fact, the client in this case, namely the Applicant, has no issue with the amount of the fees which are claimed in the bill. This was clear from the client's email of 6 March 2012 addressed to Mr Simms, Solicitor."

30. It is in this Court's view unusual that, where a court has ordered the taxation of a client's costs on the basis that it is in her interest, the client would effectively say to her solicitor that she did not want to see the costs reduced. Why and how it came about that Mrs. M would not contest the level of a bill which she found horrific, needs to be clarified.

Summary

31. In summary therefore, this is a motion where Mr. M has sought discovery of all correspondence regarding Mrs. M's legal fees and in seeking to justify the granting of such a wide ranging discovery order, this Court has been advised of number of matters which raise concerns, namely:

- the very high level of legal fees, although it seems that as matters stand, subject to a reduction of €127,000, these fees of approximately €508,000 were validly and properly incurred;

- the payment of €436,000 by Mrs. M to her lawyers in excess of what she was ordered by court she could pay, while she claims not to have enough funds to buy a home and when she has been described as not 'financially minded',

- the claim on behalf of Mrs. M that her payment to Peelo and Partners was exempt from taxation (and its subsequent removal from the taxation process) because it was paid *directly* by Mrs. M, when in fact it was actually paid by her solicitors,

- the fact that Mrs. M, against her own financial interest, sought not to challenge the level of fees which she nonetheless characterised as horrific.

Orders

32. In light of the foregoing concerns but also in the interests of saving on costs, what this Court will do is order the solicitor for Mrs. M., Ms. Clare Downes, who has already sworn an affidavit in these proceedings, to swear an affidavit within three weeks of today's date addressing all the concerns raised in this Court's judgment dealing, *inter alia*, with the following issues;

- What legal or other fees have been paid since 22nd July, 2011, (the date of McMenamin J.'s order) by Mrs. M, whether by transfers to or from the solicitor's client account or otherwise, which relate in any way to her family law proceedings, and outline the manner in which those fees have been paid.

- To the extent, if any, that funds are currently held in the firm's client account for Mrs. M, and thus are the funds of Mrs. M, this affidavit should also outline what the current balance is, what amounts, if any, were sought and obtained from Mrs. M by Mrs. M's legal advisers (with all correspondence or notes of conversations exhibited, between those legal advisers and Mrs. M), whether to be held in the client account or otherwise, and the basis for requesting those funds in light of the terms of the Order of MacMenamin J. that a sum of €200,000 could be paid on account by Mrs. M to her legal advisers. This is because evidence has been provided by Mr. M, which has not been controverted, that after the payment of €200,000 was made on the 24th August, 2011, by Mrs. M in line with MacMenamin J.'s Order, a payment of €260,000 was made by Mrs. M on the 7th December, 2011, a payment of €100,000 was made by Mrs. M on the 20th September, 2013, and a payment of €76,822.48 was made by Mrs. M on the 22nd March, 2016.

- In order to clarify what motivated Mrs. M, who is not a 'financially minded person', to decide to write the email of the 6th March, 2012, this affidavit should exhibit all notes of conversations and all documents of any nature between Mrs. M and her legal advisers in the two month period before and after her email of 6th March, 2012 (or outside this time-period, if relevant to that decision), relating in any way to her legal or other experts' costs and outlay or the taxation of those costs, which documents can be redacted insofar as they contain legal advice

33. There is no need, in this Court's view, for an expensive discovery trawl of all documents over several years which has been sought by Mr. M, which will only add to the extensive legal costs which have been incurred to date, since that discovery process would deal with the *manner* in which the funds were paid, when Mr. M's primary and legitimate interest is how much Mrs. M spends on legal fees, since she is at the same time seeking proper provision from Mr. M. This is because it is clear to this Court that Mr. M knows how much Mrs. M has spent on legal fees and so little is to be gained detailing those fees over several years, save however that more detail is required regarding certain concerns which have been raised regarding these payments and which have been addressed by the foregoing orders.

The second motion seeking transcripts

34. The second motion is dated 30th June, 2017, and seeks leave to take up the DAR of the hearings before Reynolds J. and the hearings before the Taxing Master.

35. As regards the DAR of the hearings before the Taxing Master, just as this Court does not believe that expensive and extensive discovery of invoices, correspondence *etc*., is necessary to establish the key issue of how much Mrs. M has expended on legal and associated fees in the context of her claim for proper provision, so too, it is this Court's view that it is not necessary to go to the expense of obtaining the DAR of the hearings before the Taxing Master to establish the same issue. Accordingly, this Order will not be granted.

36. As regards the DAR of the hearings before Reynolds J., under Rule 9(4) of Order 123 of the Rules of the Superior Courts, this Court may, where it considers it necessary in the interests of justice so to do, permit an applicant to have access to the DAR. This Court

does not see how the interests of justice are served by such an order being granted and Mr. M has not provided any reasons as to why access to the DAR should be provided, apart presumably from the fact that it would supplement whatever notes he took of the hearings. For this reason, this Court concludes that the interests of justice do not merit the making of such an order.

37. Finally, bearing in mind '*the objectives of expedition and economy*", and in light of the several pre-trial applications that have been sought to date in this divorce hearing, and also because even in the hearing before this Court Mr. M sought to adjourn the hearing so to enable him put in legal submissions on the discovery motion, it seems to this Court that the sooner this matter is set down for hearing, the sooner the parties can concentrate on the key issues of their divorce and proper provision, and in particular the key claim by Mrs. M's that the Trust in this case should be unwound, and therefore the more cost efficient it will be for both parties. Thus, it is this Court's hope that it will not be necessary for the parties to bring any further pre-hearing applications so that it should be possible for this matter to be given a hearing date as soon possible. While it may be a forlorn hope in view of all that has occurred to date, nonetheless if prior to the hearing date, the parties manage to settle their differences without any further costs, all the better.