

THE HIGH COURT

[2012 No. 655S]

BETWEEN

LARRY BURKE

(TRADING AS BURKE HUNT & CO.

SOLICITORS)

and

MAUREEN LAWLESS

PLAINTIFF

DEFENDANT

JUDGMENT of Mr Justice Max Barrett delivered on 29th July, 2016

1. In 2010, Ms Lawless engaged a firm of solicitors to do certain work for her. Apart from an initial down-payment of €5,000, she has not paid a cent for the work that followed. That work was not un-extensive. It related to a dispute concerning an auction of certain lands. Ms Lawless maintained that despite being the highest bidder at an auction of the lands, the lands were not sold to her. Legal proceedings were initiated. Junior and Senior Counsel were retained. Eventually, the proceedings settled. But in all the 'to-ing and fro-ing', Ms Lawless ran up legal fees of €176,433.65.

2. A comprehensive fee note issued to Ms Lawless on or about 7th November, 2011, and has been placed before the court in evidence. This indicates that the fees payable by Ms Lawless comprise, *inter alia*, €120k of solicitors' fees, almost €40k of fees for Senior Counsel, and €24k for junior counsel. These are enormous, though not at all untypical, fees that point to a continuing deficiency in our legal system whereby full and proper legal representation, at least in civil proceedings, is increasingly a boon that is properly affordable by the few who are rich, and a bane to be feared by the many who are not.

3. Ms Lawless is one of the 'many', and her affidavit evidence in this case makes for unhappy reading. A woman in her mid-seventies, she cannot afford even the legal fees necessary to come represented to this application for summary judgment. She is worried that the house she owns will need to be sold to meet the legal fees that she now owes. But the difficulty that presents for Ms Lawless, a competent adult, is that she freely engaged the various lawyers who are now pursuing her for fees, they did substantial work for her and, whatever one may make of the levels of fees arising, Ms Lawless has, in truth, no defence to the within application for summary judgment. She has instituted proceedings for negligence against her onetime solicitors, but that is a separate matter. If the court applies the test stated by Hardiman J. in *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607, 623, it is very clear that Ms Lawless has no defence, not even an arguable defence, in terms of her liability to pay the legal fees now long arising for payment by her. Even bringing to these summary proceedings that "*discernible caution*" to which McKechnie J. makes reference in *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1, 7, there is, unfortunately, no alternative but for the court to enter judgment against Ms Lawless.

4. In light of the foregoing, the only remaining issue arising for the court is whether it ought to enter judgment for the amount sought or whether "*special circumstances*" present that justify the court referring the bill to taxation and entering judgment for such amount as may be found to be owing upon taxation. When this Court gave judgment a couple of months ago in *Spring v. Joyce* [2016] I.E.H.C. 260, it considered the law as regards referring a solicitor's fee note to taxation, including the law as identified in certain salient and helpful cases, such as the decision of the Supreme Court in *State (Gallagher Shatter & Co.) v. DeValera* [1986] I.L.R.M. 3 and the recent decision of the Court of Appeal in *Dorgan v. Spillane* [2016] I.E.C.A. 84. *Spring* was opened to the court by counsel for Mr Burke in the within proceedings; the court is satisfied with its consideration of the applicable law in that case and does not propose to engage in a further such examination here. Suffice it to note that as there has not been payment of the bill presented in this case, the court enjoys a statutory jurisdiction under the Solicitors (Ireland) Act 1849 to refer the bill in issue to taxation, as well as a separate inherent jurisdiction, as recognised by the Supreme Court in *Gallagher Shatter*, so to do.

5. The "*special circumstances*" that are contended to present in this case are that on 28th November, 2011, Ms Lawless' solicitor, in a letter that is understandably somewhat frustrated in tone, indicated that if Ms Lawless continued not to pay her outstanding fees he would proceed to taxation. Yet instead of going to taxation, he has proceeded instead to seek summary judgment from the court for the amount that he contends to be, and which the court finds is, outstanding. Is this a 'special circumstance' that merits sending matters to taxation at this time? In truth, the court sees the letter of 28th November, 2011, to be nothing more than a standard 'Pay up or else'-type letter that many service-providers would send as part of a continuing effort to procure payment from a recipient of services who is proving recalcitrant as regards the payment of fees owed. It was not a commitment binding in law or equity that the solicitor would necessarily proceed to taxation before coming to court. It was, in effect, but a threat to 'go legal', and 'go legal' the solicitor has duly gone – and not, it should be noted, without considerable forbearance on his part in the interim, as well as very real efforts by him to arrive at some form of amicable arrangement.

6. In the facts of this case, the court sees, yet again, a need for a more general re-assessment of the appropriateness of the scale of legal fees that now seem so regularly to be charged for legal representation, as well as a further reminder of the need for so-called 'ordinary' people to be vigorously watchful of the costs that are incurred by them towards professional advisors in the course of legal proceedings. However, the court does not see any "*special circumstances*" that would justify invoking its statutory jurisdiction under the Act of 1849 to send the fee note in this case to taxation at this time. Nor does the court consider any reason to present that would justify its exercising its inherent jurisdiction so to do. The court is therefore coerced as a matter of law, and despite a natural sympathy for Ms Lawless, into (a) acceding to the within application for summary judgment in the amount sought, and (b) declining to send matters to taxation.

