

THE HIGH COURT

[2011 No: 96 SA]

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

BETWEEN

THOMAS HIGGINS

APPELLANT

AND

ALANA NOLAN

SOLICITOR/RESPONDENT

JUDGMENT of Kearns P. delivered on the 13th day of February, 2012

This is an appeal by Thomas Higgins, 57 Lower Pouladuff Road, Casey's Cross, Cork ("the appellant") against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") dated the 27th of October 2011, that there is no prima facie case of misconduct on the part of Alana Nolan, Anne L. Horgan & Company, Solicitors, 2 & 3 Convent Road, Blackrock, Cork ("the respondent solicitor").

In the application to the Tribunal for an inquiry into the conduct of the respondent solicitor, the appellant made approximately thirty complaints about the respondent solicitor's conduct in connection with the administration of the estate of John Higgins. Each of the allegations made by the appellant against the respondent solicitor was rejected by the Tribunal as having been adequately rebutted by the respondent solicitor; not disclosing conduct which could be construed as misconduct; or because the Tribunal found that there was no evidence to support the allegation made.

BACKGROUND

The appellant in these proceedings is the son and sole executor of the estate of John Higgins who died on 20th March, 2010. On 22nd October, 2009 Kieran Riordan, Solicitor, 14 Princes Street, Cork drew up a last will and testament for John Higgins in which each of his 9 children were to receive a one ninth share of his estate, after the payment of his just debts, funeral and testamentary expenses. The appellant retained Kieran Riordan for the provision of professional services in the administration of the estate of John Higgins. It was decided amongst the beneficiaries that John Higgins' house should be sold and the proceeds divided between them.

In April 2010 a handwritten document came to light purportedly drafted by John Higgins on 28th December, 2009, bequeathing his house to the appellant. Administration of the estate of John Higgins was suspended whilst this handwritten document was being looked into and John Higgins' house was taken off the market. Subsequently, the handwritten document was disregarded so that the only will of John Higgins in question is that of 22nd October, 2009.

On 3rd November, 2010 the respondent solicitor was first consulted by Catherine Kelly and Dolores Conroy, daughters of John Higgins and beneficiaries of his estate. Mdms Kelly and Conroy expressed grave concerns on behalf of the beneficiaries over the handwritten document, the removal of their father's property from the market, and their belief that nothing had been done to administrate their father's estate up to that point.

Over the following months voluminous and protracted correspondence ensued between Kieran Riordan, the respondent solicitor and Royal Liver Assurance in relation to the estate of John Higgins. On 7th July, 2011 the appellant made an application to the Solicitors Disciplinary Tribunal for an inquiry into the conduct of the respondent solicitor on the ground of alleged misconduct in her handling of the affairs of the estate of John Higgins.

The Tribunal decision dated 27th October, 2011 held that there is no prima facie case of misconduct on the part of the respondent solicitor. By notice of motion returned on 16th January, 2012 the appellant appealed the Tribunal decision.

AFFIDAVIT OF THOMAS HIGGINS

By affidavit of the appellant sworn on 23rd November, 2011 he states that he is personally conducting this appeal.

The aspects of the appellant's affidavit which pertain to the respondent solicitor's alleged misconduct are set out as follows:

- (i) firstly, the appellant avers that the respondent solicitor holds monies belonging to the estate of John Higgins in the client account of Anne L. Horgan and Company which have been sought by him in his capacity as executor, and that the value of these monies is ambiguous.
- (ii) Secondly, the appellant alleges that the respondent solicitor blatantly misrepresented herself to Royal Liver Assurance as representative of the executor of the estate of John Higgins, communicated with Royal Liver Assurance in respect of the estate and caused confusion with Royal Liver Assurance resulting in delay to him finalizing the estate. The appellant also states that the respondent solicitor should not be communicating with Royal Liver in any form.
- (iii) The appellant queries the whereabouts of the sum of €504.25 in respect of Royal Liver policy number 171906438 plus the premium sum of €5.71.
- (iv) Finally, the appellant avers that the respondent solicitor was argumentative, discourteous and condescending towards him in her correspondence and had she not been, the estate would be probated and finalized by now.

REPLYING AFFIDAVIT OF ALANA NOLAN

A replying affidavit was sworn by the respondent solicitor on 13th December, 2011.

Firstly the respondent solicitor states that the appellant failed to deliver his appeal within the statutory twenty one day period prescribed in the Solicitors Acts 1954 to 2008, and the appeal is therefore out of time. The respondent solicitor avers that she received that the appellant's Notice of Motion on 25th November, 2011 in excess of 21 days after the Tribunal decision dated 27th October, 2011.

Notwithstanding the respondent solicitor's contention that the appeal is out of time, the respondent solicitor maintains her position as set out in her affidavit dated 25th July, 2011 and letter to the Law Society dated 24th August, 2011.

The respondent solicitor avers that on 15th November, 2011 a cheque was issued by Anne L. Horgan and Company to Kieran Riordan & Co in the amount of €965.56 for the credit of the estate of John Higgins, which was the only amount held by Anne L. Horgan and Company in relation to the estate. At the time of swearing the affidavit, the amount of interest payable on the sum of €965.56 is awaited from the bank but is expected to be minimal.

RULING

It appears that the within appeal is outside of the 21 day period allowed by section 7 of the Solicitors (Amendment) Act, 1960 as amended. However, notwithstanding this, the appeal fails for the reasons set out forthwith.

Regarding the appellant's contention that the respondent solicitor holds monies belonging to the estate of John Higgins, the Court is satisfied from all of the correspondence produced that any monies which were held by Anne L. Horgan for the benefit of the estate of John Higgins were at all times disclosed by the respondent solicitor to Kieran Riordan. All such monies held in the client account of Anne L. Horgan to the credit of the estate of John Higgins were transferred to Kieran Riordan & Co. on 15th November, 2011.

The Court finds that there is no ambiguity in relation to the sum transferred, as alleged by the appellant. The amount of €965.56 is comprised of Royal Liver Assurance policy number 172523117 paid out to Catherine Kelly on 26th May, 2010 prior to the office of Anne L. Horgan being instructed by Catherine Kelly and Dolores Conroy on 3rd November, 2010.

On 3rd January, 2011 Royal Liver Assurance confirmed to Kieran Riordan & Co. that this payment was made. On 2nd February, 2011 Royal Liver Assurance further confirmed that the payment to Catherine Kelly was made with the authority of the executor as per the Administration of Estates Indemnity form. The Court notes that on page 1 of the Administration of Estates Indemnity form in relation to this policy, a box is ticked which indicates that Catherine Kelly is the executor of the estate. The identification of Catherine Kelly as executor of the estate of John Higgins is not correct as Thomas Higgins is the sole executor of the estate of John Higgins. However, this error does not implicate the respondent solicitor in any way as the claim on this particular policy was made in May 2010, ever before the firm of Anne L. Horgan was instructed in November, 2010.

In the respondent solicitor's telephone conversations and correspondence with Royal Liver Assurance she made it clear that the firm of Anne L. Horgan did not act on behalf of the executor of the estate of John Higgins, but represented beneficiaries of the estate.

There is no evidence to substantiate the allegation that the respondent solicitor has played any part in the communication difficulties experienced by the appellant and Kieran Riordan & Co. with Royal Liver Assurance. Any confusion on the part of Royal Liver Assurance as to what assurance policies belong to the estate of John Higgins cannot be attributed to the respondent solicitor. Furthermore, the respondent solicitor is entitled to contact Royal Liver Assurance on behalf of her clients, independent of the affairs of the estate of John Higgins.

Regarding the appellant's query of the sum of €504.25 in respect of Royal Liver policy number 171906438, it is clearly stated in a letter from Royal Liver Assurance to Kieran Riordan & Co. dated 2nd February, 2011 that this policy was paid out by Royal Liver Assurance to Mrs Catherine Kelly, who was the proposer and legal owner of the policy. This was further confirmed by Anne L. Horgan to Kieran Riordan by letter dated 18th February, 2011.

Finally, I have carefully read all of the correspondence provided which passed between the respondent solicitor, the appellant and Kieran Riordan. It appears to the Court that correspondence from the respondent was professional and endeavored to represent the best interest of her clients. There is nothing contained in the correspondence to indicate that the respondent solicitor was discourteous, argumentative or condescending to the appellant.

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 with an order for costs in favour of the respondent solicitor.

APPROVED