

**THE HIGH COURT**

**[2013 No. 47 SA]**

**IN THE MATTER OF THE SOLICITORS ACTS 1954 - 2008**

**BETWEEN**

**PATRICK O'RIORDAN**

**APPELLANT**

**AND**

**SOLICITORS DISCIPLINARY TRIBUNAL**

**RESPONDENT**

**JUDGMENT of Kearns P. delivered on the 15th day of July, 2013**

By notice of motion returnable on 22nd April, 2013 Patrick O'Riordan ("the appellant") seeks an order allowing an appeal against the finding of the Solicitors Disciplinary Tribunal ("the Tribunal") of 10th January, 2013 that the respondent solicitor, Alexander Gibbons, is not guilty of professional misconduct in relation to the following four matters:

- misleading his client, the appellant, regarding the terms of a contract;
- exposing client to substantial loss by failing to complete the purchase of a property;
- acting dishonestly as to the true identity of the parties; and
- failing to safeguard his client's funds.

On each of the allegations against the respondent the Tribunal found him not guilty of professional misconduct by reason of the evidence adduced.

In essence this is an appeal against a finding made by the Tribunal that the appellant was not a client of the respondent solicitor in relation to a certain overseas property purchase. The issue to be decided upon by this Court is whether or not there was a solicitor client relationship between the parties.

There is no replying affidavit on file on behalf of the Solicitors Disciplinary Tribunal.

**AFFIDAVIT OF THE APPELLANT**

In the affidavit of the appellant which was filed on 20th March, 2013, Mr. O'Riordan avers that the Tribunal made the following findings regarding allegations of misconduct:

- a) Misled the applicant as his client in regard to the terms of a contract which he misrepresented to the applicant as his client.

Finding: The respondent is not guilty of professional misconduct by reason of the evidence adduced.

- b) The respondent solicitor was furnished with sufficient funding to complete the purchase of the property and furnished proper title to same. The respondent solicitor failed to do so thus exposing the applicant, his client, to substantial loss.

Finding: The respondent is not guilty of professional misconduct by reason of the evidence adduced.

- c) Acted dishonestly as to the true identity of the parties with whom he was dealing. Finding: The respondent is not guilty of professional misconduct by reason of the evidence adduced.

- d) Failed to take proper care to safeguard his client's funds.

Finding: The respondent is not guilty of professional misconduct by reason of the evidence adduced.

- e) Failed to disclose the true terms of the contract so as to conceal his own dishonest dealings.

Finding: The respondent is guilty of professional misconduct by reason of the evidence adduced.

The appellant avers that in December 2005 Mr. Gibbons contacted him in relation to the purchase of property in the Cape Verde Islands. At the time the appellant was a trainee in the practice of Mr. Gibbons. The appellant agreed to purchase four apartments in a block of 16 at a cost of €350,000. He paid monies into the client account of the practice of Mr. Gibbons in his own name and the receipt of the transactions was confirmed in the client ledger. It was his understanding that Mr. Gibbons would complete the purchase on his behalf and obtain good title for him as his solicitor in this conveyancing transaction.

Mr. O'Riordan made several enquiries regarding completion of the sale but very little information was forthcoming. He contacted Cape Verdian/ Portuguese lawyers and found that the price was in the amount of €1 million for the block of apartments rather than the €1.4 million he was advised of and learned from a personal visit to Cape Verde that €100,000 remains outstanding. He believes that this money was not paid over despite the funds being available and as a result the apartment block remains in the name of the developer.

On 10th January, 2013 two hearings took place those of *Patrick O'Riordan v Alexander Gibbons* (Record no. 5839/DT112/12) and *Tony Murphy v Alexander Gibbons* (Record no. 5839/DT112/12). The first hearing is being appealed in the present case and the second involved a complaint by Mr. Murphy, who had agreed to purchase half of the apartments in the block, against Mr. Gibbons. In relation to that matter the Tribunal made four findings of professional misconduct against Mr. Gibbons. According to the appellant the findings of the Tribunal are inconsistent as Mr. Murphy took part in the same transaction to purchase property using the service of Mr. Gibbons. The appellant avers that the Tribunal declined to hold that he was a client of Mr. Gibbons in circumstances where it accepted that Mr. Murphy was a client. The appellant claims in his affidavit that the different findings are at variance with the evidence. It is submitted that he, like Mr. Murphy, was a client of the respondent solicitor in relation to the property transaction. The applicant also comments that in June 2011 Mr. Gibbons was suspended from practice as a solicitor and on 21st May, 2012 his name was struck off the Roll of Solicitors by the High Court.

In the supplemental affidavit of Mr. O'Riordan filed on 19th April, 2013 he avers that there is ample evidence to allow an inference to be drawn that Mr. Gibbons was his solicitor. He states that he first instructed Mr. Gibbons as his solicitor in or about 1995 in relation to a will. He also instructed him in relation to a number of Irish property transactions and in 1996 Mr. Gibbons acted on behalf of him and his wife in relation to a property at Castlesealy Court, Bandon, Co. Cork. Further, he avers that Mr. Gibbons acted for him in the purchase of properties at 4, 6 and 7 Village Moorings, Baltimore, Co. Cork where the conveyancing and the mortgage formalities were dealt with by Mr. Gibbons.

## **DECISION**

The appellant in this case complains that the Tribunal's findings were inconsistent when compared to the case of Mr. Murphy; however, Mr. Gibbons had been Mr. Murphy's solicitor for over 20 years doing the transactions for his aluminium and PVC window business. He also undertook transactions in relation to eight houses and a conveyance in relation to another property. This may be contrasted with the more sporadic dealings between the appellant and Mr. Gibbons in the context of client and solicitor. Moreover, the Court cannot lose sight of the fact that there was a trainee solicitor relationship in existence in 2005. The Court finds favour with the statement of the Tribunal, at p.50 of the transcript where it states that "we believe that given the longstanding professional relationship that existed between Mr. Murphy and Mr. Gibbons, Mr. Murphy relied on Mr. Gibbons to conduct himself in this complex transaction with the interests of Mr. Murphy at the fore. He failed utterly to do that." It is clear that a different relationship existed between Mr. Murphy and Mr. Gibbons than that between the appellant and Mr. Gibbons.

Mr. O'Riordan's complaint against the Tribunal is based on his account that the relationship between him and Mr. Gibbons was that of solicitor client rather than that of business partners. The Court notes that in 2005 the appellant was not a qualified solicitor and did not qualify until 2007. It is not disputed that when the appellant agreed to buy the apartments he paid the funds into the client account of Mr. Gibbons. The plaintiff claims that he did this because he considered Mr. Gibbons to be his solicitor acting in the purchase and that otherwise he could have paid the funds to Mr. Gibbons without going through the client account. The appellant adds that Mr. Gibbons took on the responsibility regarding the purchase of apartments in the Cape Verde Islands. The Court is being asked to consider the fact that monies were paid into the client account and that Mr. Gibbons took over responsibility as sufficient evidence to establish that there was a solicitor client relationship. The Tribunal was satisfied that there was a course of dealings which would establish a business relationship between the parties but not a solicitor client relationship. It states, at p. 47 of the transcript, that "[h]aving given careful consideration to the evidence before this Tribunal we have come to the conclusion that the precise nature of the relationship between Mr. Gibbons and Mr. O'Riordan has not been established to the standard required by this Tribunal but we are satisfied there was at the very least a business relationship between the parties." I can find no reason to contradict this from the evidence put before the Court.

Having carefully reviewed all of the papers before me, including the affidavits and transcript of the Tribunal inquiry, I am of the opinion that the appellant has not made out a sufficient case as to why the Court should allow the appeal against the findings of the Tribunal and the appellant has failed in evidence to establish that a solicitor client relationship existed between him and Mr. Gibbons. I cannot, therefore, go as far as finding from the evidence before me that there was established to the Court's satisfaction the relationship of client and solicitor. Consequently, I am satisfied that the findings of the Tribunal of no case of misconduct on the part of Mr. Gibbons in relation to allegations a) to d) were entirely appropriate.

I therefore dismiss the appeal with no order as to costs.