

THE HIGH COURT**2009 109 SA****IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2002****AND IN THE MATTER OF M.J. CARTER, A SOLICITOR****BETWEEN****M.J. CARTER****SOLICITOR/RESPONDENT****AND****ELIZABETH SHANNON****APPLICANT/APPELLANT****JUDGMENT of Kearns P. delivered on the 22nd day of February 2010**

This is an appeal against a finding of the Solicitor's Disciplinary Tribunal dated 25 November 2009 that there was no misconduct on the part of the respondent solicitor. In the course of the appeal proceedings, the Court has been presented with voluminous affidavit evidence which sets out the background facts and the issues between the parties. From her grounding affidavit, it appears that the appellant, described therein as a non-practising solicitor, farmer and substitute teacher, engaged the respondent for the purposes of obtaining legal advice in relation to the family farm of the appellant's mother, Ms. Hilda Shannon, deceased.

The appellant goes on to set out a long list of complaints against the respondent. First, she claims that the respondent solicitor failed to engage senior counsel, despite her instructions to the contrary, and that he led her to believe that he was acting on the advice of senior counsel at all material times. She claims she instructed the respondent to let her meet with junior counsel but that he disobeyed her instructions in that regard also. The appellant claims that she instructed the respondent solicitor to seek an injunction to keep her brother off the land and that this instruction, like the others, was ignored.

As a further example of alleged misconduct, the appellant claims that the respondent solicitor's fees were grossly exaggerated and did not reflect the level of work properly done. The appellant relies on a letter from counsel dated 12 February 1995 and states that had she been shown that letter, she would not have instructed the solicitor to proceed with the s.117 proceedings ultimately instituted as a challenge to her late mother's will. The appellant contends that the respondent solicitor disobeyed instructions and concealed valuable advices and information from her and her sister, Gwendoline Shannon, and that therefore the work in respect of which the fees were charged could not be said to have been properly done.

It is therefore a substantial part of the appellant's claim that the respondent solicitor negligently instituted proceedings on her behalf under s.117 of the Succession Act in circumstances where there was a letter on the file from counsel to the effect that s.117 proceedings were not appropriate. The appellant is of the view that the respondent solicitor deliberately concealed this letter from her and from her sister and the following month issued the proceedings notwithstanding the advice from counsel. The appellant accuses the solicitor of having told deliberate lies in relation to the issue of having briefed both senior counsel and junior counsel.

The appellant describes an incident involving an alleged assault on her and her sister by her brother which resulted in her brother being charged with assault. The appellant alleges that the respondent was instructed to act as a "watchdog" in the subsequent criminal case before the District Court but that he failed to keep her informed of the progress of same. It appears that this matter was not proceeded with and the appellant is of the view that the respondent solicitor was in collusion with others to destroy her case for his own personal reasons and that he was facilitating the other side against his own clients. The appellant also claims that she and her sister have been prejudiced by the respondent in bringing a civil action arising out of the alleged assault and have been advised not to proceed with same. The appellant maintains that the dismissal of the criminal case against her brother severely prejudiced her civil action and that the respondent played a role in or was responsible for that prejudice. Before the tribunal, it was admitted by the appellant that the civil proceedings arising out of the assault were indeed ongoing and being handled on her behalf by the Legal Aid Tribunal. She further submitted that she had obtained an opinion from counsel to the effect that she should not continue to pursue those proceedings as a consequence of the dismissal of the criminal case. The tribunal requested to see this opinion but the appellant claimed she had received legal advice not to release it. Ultimately, the tribunal concluded that there was no valid basis for this allegation and noted that it was not persuaded as to the veracity of the appellant's complaint in this regard.

In addition to the above complaints, the appellant also claims that the respondent allowed a caveat in respect of her mother's will to expire. The tribunal noted that no independent expert evidence had been furnished to show that letting the caveat expire was in some way detrimental to the appellant and found that in fact it suited the appellant to let it expire to facilitate the institution of the s.117 proceedings.

In response to the multifarious and often perplexing allegations made against him, the respondent claims that in or around the time of his action against her for payment of fees in the matter entitled "Michael J. Carter t/a Howley Carter & Co., Plaintiff and Elizabeth Shannon and Gwen Shannon, Defendants Record. No. 288.00", the appellant threatened to cause him maximum financial and other hardship if he did not withdraw his claim. It is the

respondent's case that the appellant made the within complaint against him to the Law Society in an effort to avoid responsibility for the discharge of his fees.

The respondent solicitor states that at no stage in the succession matter did the applicant seek from him the opinion of senior counsel. On the evidence before the Court, it appears that the appellant, for at least an initial period, had instructed another firm of solicitors at the same time as she was instructing the respondent herein and that this was done without the respondent's knowledge. The respondent solicitor is of the view that the appellant may have discussed the issue of senior counsel with this other firm of solicitors but that he had no instructions in that regard. The respondent accepted at the hearing of the tribunal that there was no instruction in writing to the respondent solicitor to engage senior counsel.

On the subject of fees, the respondent accepts that the fees sought by him from the appellant had been subjected to a reduction on the recommendation of the Law Society. The respondent solicitor explains that revised fees dated 31 May 2000 totalling €11,560.45 were forwarded to the applicant and her sister and that these were the basis for the Circuit Court proceedings initiated against them in 2000 and in which the Circuit Court granted judgment on 1 June 2006. The said figure of €11,560.45 consisted of the £8,100 recommended by the Law Society plus outlays of £415.00 and VAT at £1,788.15 and the sum of £1,257.30 as counsel's fees. I understand from the affidavits filed on behalf of the respondent that these fees have not been paid.

As regards the s.117 proceedings, the respondent submits that on the basis of the information and instructions provided to the respondent, there was no alternative course of action open to the appellant and her sister with regard to the contents of their mother's will but to bring a s. 117 application. On this point, the Tribunal was not satisfied that the respondent gave the appellant incorrect or misleading advice on the s. 117 issue. I am equally unconvinced by this element of appellant's claim.

The respondent solicitor submits that at no time was it ever suggested by him, as appears now to be believed by the appellant, that two cheques referred to by her in her complaint to the Law Society were going to be retained by the solicitor in discharge or part discharge of his professional fees for acting on her behalf. The two cheques in question were the cheques addressed to the appellant and her sister pursuant to the terms of their mother's will whereby they were to receive £7,000 each.

As regards the assault proceedings against the appellant's brother, the respondent states that he had no role in the listing of the State prosecution in that matter other than to conduct a watching brief and that as such he would not have been informed of the listing of the case. In those circumstances, the respondent denies any impropriety on his part in this matter and ultimately, the tribunal found that there was no basis for this limb of the appellant's complaint.

The respondent states that at no time during his professional relationship with the Shannons did they allege or in any way suggest or intimate that their mother had been influenced in any way in the making of her will or that she lacked testamentary capacity. The solicitor emphatically denies the appellant's allegation, which he describes as "*quite outrageous*", that he had a hidden agenda to set the applicant and her sister up to fail or that he had endeavoured to pervert the course of justice. He states that "*such an allegation taints not only me, but the counsel originally retained by me, and demonstrates... an element of grossly unfounded suspicion and delusion on the part of the applicant...*".

It seems to me that the appellant has indeed displayed a constant stream of unfounded suspicion towards the respondent solicitor in the conduct of these proceedings. General allegations, regardless of the strength or venom with which they are stated, are insufficient to amount to a case of fraud of which any court ought to take notice. To take but one example, the appellant's contention that the respondent was somehow colluding against her and was in league with the accused in the assault proceedings is manifestly groundless. The respondent solicitor had no role whatsoever in the assault proceedings other than to perform a watching brief.

In *Fay v Tegral Pipes Ltd.* [2005] 2 I.R. 261, which involved an application to dismiss the plaintiff's claim for being frivolous or vexatious, McCracken J. made a number of pertinent observations regarding the jurisdiction of the court to filter out such claims. Though these proceedings do not involve any such application, the comments of McCracken J. serve as a reminder of the court's discretion to halt or dismiss vexatious claims. He said, at p. 266:

"... the courts are entitled to ensure that the privilege of access to the courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes, and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law."

The respondent in this case, or indeed any party to litigation, ought not to be subjected to what McCracken J. in *Fay* described as "*the time consuming, expensive and worrying process*" of being asked to defend a claim which appears to be entirely built upon general allegations of a spurious nature. Far from involving genuine allegations of misconduct, this appeal seems to me to be motivated more by an unscrupulous desire on the part of the appellant to harass and oppress the respondent solicitor in circumstances where he was the successful party in earlier proceedings for fees against the appellant and her sister.

While I have been asked to join the Law Society as a notice party and to hear further evidence from various parties, including the appellant's sister, and to hear further submissions, I am satisfied that this matter has been fully and comprehensively examined by the tribunal and I will not accede to this request.

Being satisfied that this claim is wholly devoid of merit, the appeal is dismissed with an order for the respondent's costs.