Neutral Citation Number: [2011] IEHC 358

THE HIGH COURT

2009 20 MCA

BETWEEN

WILLIAM HACKETT TRADING UNDER THE STYLE OF WILLIAM HACKETT

AND COMPANY SOLICITORS

PLAINTIFF

v.

PATRICK ROCHE

DEFENDANT

JUDGMENT of Mr. Justice McCarthy delivered the 29th day of July, 2011

1. The plaintiff was instructed by the defendant to act for him in certain proceedings in the Circuit Court (an action for damages of personal injuries) which were commenced on the 4th February, 2000. The defendant (for reasons that need not concern me) ultimately determined the plaintiff's retainer as his solicitor on the 11th November, 2001. In that regard the plaintiff says that the defendant failed to provide him with the name of a solicitor to which the file ought to be sent which also gave rise to disputation. Ultimately the personal injury proceedings were determined in this Court (having been transferred from the Circuit Court on the 11th February, 2009).

2. In the intervening period the plaintiff had sued the defendant for outstanding fees in relation to a number of matters, in the Circuit Court, and recovered judgment against the defendant in the sum of €15,506.63 and costs together with interest pursuant to the Courts Act, and before Her Honour Judge Dunne, as she then was.

3. Having regard to the settlement of the defendant's action whereby a sum of money became payable to him, application was made to this Court, ex parte, for a conditional order of garnishee on the 18th February, 2009, in execution of the judgment of the 25th June, 2004. An order was made in the sum of €50,000. De Valera J. directed that service be effected on the garnishee by any or all of the following means, namely, telephone, fax, e-mail, post (registered and ordinary) or personally. He further ordered that the defendant be served and not merely the garnishee (by the garnishee I mean the solicitors for the defendant in the personal injuries action namely, Messrs. O'Rourke Reid).

4. The matter was put into the common law motion list in the ordinary way, on the plaintiff's application to make an absolute order. At no time did the defendant in the personal injuries action or Messrs O'Rourke Reid appear. The matter was, however, adjourned from time to time, at least one such because the plaintiff wished to tax his costs in the Circuit Court.

5. In respect of service, the position of the plaintiff was that one of the principals of O'Rourke Reid, solicitors for the defendant in the personal injuries action (Ms. Purtill) was advised of the order by telephone, including the fact that the matter would next come before the court on the 23rd February, 2009, for the purpose of seeking an absolute order. The plaintiff further asserts that by letter of the same date the solicitors in question were furnished with copies of all pleadings and a true copy of the order of deValera J. It appears that a confirmation was received in writing from her on the 27th February, 2009. With respect to the defendant, the plaintiff asserts that he telephoned Mr. McAvin, the solicitor then on record for the defendant in relation to his personal injuries action and informed him of the fact of the conditional order of garnishee but merely left a voice mail. The plaintiff asserted that he then furnished copies of the pleadings before this Court in respect of the application for the order of garnishee with information as to the fact that the order was made, by e-mail on the 23rd February, 2009. It was further asserted by the plaintiff that he effected service by registered post on the 23rd February, 2009, but that the envelope was returned on the 5th March, 2009. Thereupon, he says he sent the same set of papers with advice to the defendant as to the adjourned date of the application to make the order absolute (the plaintiff's solicitors having applied for an adjournment when the matter came into the list on the 23rd February, 2009, for the purpose of effecting service). On the 30th March, 2009, the defendant appeared in person and the matter was adjourned to the 20th April. On the 30th March, by motion, grounded on his own affidavit, the defendant sought an order, in short, to the effect that this service was "invalid", and the matter was adjourned thereafter from time to time and ultimately on the 27th July, 2009, put into the non jury list to fix dates.

6. The matter came before me for hearing on the 19th October, 2009. On that date the defendant was represented by solicitor and counsel, who pursued the matter on the basis that the order of deValera J. was not served on the defendant within time. The purpose of the adjournment on that day was to permit further submissions in as much as in the exchanges with parties the issues had been clarified. Subsequently, the matter was adjourned on seven occasions, between the 9th November, 2009, (being the first adjourned date) and the 4th February, 2010. The reason for these adjournments were various. They included the non availability of counsel for the defendant (he was a member of the Bar of Mauritius and that of England and Wales, to the best of my recollection, and I afforded him a right of audience). Further, at least one adjournment was granted because there was no court time available (due to the fact that I was continuously engaged in criminal business during the period in question and, indeed, since, when such business, by definition, took priority). In any event, ultimately the defendant appears to have parted company with his solicitor and counsel.

7. In any event, on the 16th March, 2010, I deemed the service actually effected on the defendant to be good service. I believe that that order is under appeal to the Supreme Court but I am informed that it cannot proceed in the absence of a note of my judgment. I have indicated to the parties that in the normal way they should attempt to agree a note and submit it to me for approval, but this has not been done to date. (The judgment was extempore).

8. In the absence of the defendant the order of garnishee was made absolute on the 13th December, 2010, following a number of adjournments. I had afforded an opportunity in the period between the 16th March and that date to the defendant to apply to the

Circuit Court to set aside the judgment which was the ultimate foundation of the application for the garnishee order. I believe it to be correct that the defendant made application to the Circuit Court for that purpose and that was adjourned from time to time there.

9. I did not make the order absolute on the 16th March, because in the course of submissions counsel for the defendant sought to impugn the Circuit Court judgment. At that stage I was given to understand that there was a potential basis for seeking to have the plaintiff's judgment set-aside. I accordingly adjourned the matter on the undertaking of the defendant to issue a motion to set-aside that judgment, not later than the 23rd March. Had it been brought to my attention, that, in fact, the judgment was given after a full hearing which would have undermined, if not eliminated any basis for setting it aside I cannot conceive that I would have taken this course.

10. The matter came before the Circuit Court on a number of occasions, (three, according to the plaintiff's affidavit of the 22nd June 2001) and the application was ultimately refused on the 19th May 2011. I have no reason to suppose that it was not adjourned during that period, at least once, because of the defendant's state of health (as asserted by him) on affidavit. In addition it appears that a motion for discovery was issued in the Circuit Court in connection with the motion set-aside judgment but this too was refused. I am informed that these orders were appealed to this Court on the 26th May 2011.

11. I believe that there were five adjournments of the issue of whether or not the conditional order should be made absolute (after the 16th March). At least one of those adjournments was at the behest of the defendant on the grounds that he was seeking to obtain civil legal aid (an adjournment which I granted notwithstanding the fact that I knew that in the nature of the proceedings in this Court and in the Circuit Court it was highly unlikely such civil legal aid would be afforded); certainly the majority of the adjournments were granted because of the continuing pendency of the proceedings in the Circuit Court and, at least one, in addition, because of the defendant's health. There is no doubt but that on or before the 13th December, his medical reports were furnished to me as to the state of health of the defendant but I took the view then and remain of the view now that finality had to be brought into the case. In my view this was so, having regard to the then enormous latitude given to the defendant, the fact that even a brief appearance to explain in person his medical difficulties had not been made by the defendant (when the reports were of course hearsay and even taken at their highest did not satisfy me that he could not have appeared) and the fact that, if anything, a potential injustice had been worked against the plaintiff because of that latitude I had granted to the defendant, (and the delay hereby caused), it was appropriate to dispose of the matter on the 13th, which I did. Obviously a judge is entitled to proceed in the absence of a party or to reject any application express or implied for an adjournment. Having regard to the history of the matter I do not think that the defendant could or should have assumed that the matter would not be dealt with on 13th December and if and in so far as he has expressed surprise about this on affidavit, his view was not objectively justified. I knew at that stage that the Circuit Court judgment had not been given in default.

12. An application *ex parte* was made before my colleague Irvine J. on the 18th April, 2011, to place a stay of execution on the absolute order of 13th December, 2010 and she further afforded liberty to the defendant to issue a motion to set aside the absolute order, returnable for the 9th May, 2011. I continued that stay on the basis that I though it right that any application to set aside the order should not be pre-empted by its execution. I saw fit to adjourn the matter ultimately to the 22nd June, 2011 but it was further adjourned to the 29th June, 2011, to afford the defendant an opportunity of considering the affidavit of the plaintiff filed and served on the 22nd June, 2011, which I had directed the plaintiff to swear to set out the history of this matter from beginning to end. The defendant swore a replying affidavit, dated the 27th June. In addition, objection was taken to me to hearing the application to review the absolute order in as much as it was contended that, as the defendant saw it, no judge could hear an appeal from himself. I explained to the defendant that that was not the nature of the application and took the view that I could and indeed should hear the matter, having regard to its sequence to date.

13. The original notice of motion grounding the application to set aside the judgment was one dated 3rd May, 2011. At the defendants behest and again even though that was an unusual course I permitted the substitution therefor of a new notice dated the 22nd June. It seeks an order "pursuant to the provisions of O. 45, r. 7 of the Superior Court Rules" together with a stay "until the determination of all pending Circuit and Supreme Court proceedings in the following matters of (sic) Dublin Circuit Court Record No. 2003/08281 and Supreme Court Record Nos. 2010/180 and 2010/282". The former proceedings are those seeking to set aside the original judgment and the latter, as I understand matters, are appeals against the conditional order of garnishee of de Valera J. and my order deeming service of that order good. The defendant sets out in the body of the notice of motion the grounds of appeal to the Supreme Court in the several appeals but, again, these are not relevant.

14. The defendant, at the hearing, sought to amend his notice of motion by the addition of a further ground of challenge and initially sought an adjournment for that purpose. Having regard to the lengthy course of this matter, I indicated that I would afford him an opportunity to apply for it that day and that I would make the amendment notwithstanding the want of notice or form.

15. This new ground can, I believe, be summarised as one to the effect that an alleged concealment of information known to the plaintiff had occurred and in particular that the plaintiff had secured €4,381.50 as costs in the personal injury action, held by the garnishee for his benefit, and that both he and the garnishee were aware of this matter. Under this heading, the defendant also asserted, in effect, that the plaintiff was seeking what might be described as double recovery in respect of that amount, that it should have been disclosed to de Valera J. (or me) and that such double recovery was fraudulent and would be a criminal offence under the Criminal Justice (Theft and Fraud Offences) Act 2006 – such that the order, should be set aside on the ground of fraud. The application was grounded upon the affidavit of the defendant dated the 3rd May, 20011 and the exhibits therein, and affidavits of the defendant of the 22nd June, and the plaintiffs affidavit of the 22nd June together with a replying affidavit of the 27th June, 2011 and also the exhibits therein. I was also furnished with written submissions and certain memoranda of attendance prepared by Patrick Clohessy, the defendants Mackenzie friend. Ultimately, the matter came on for full hearing on the 29th June.

16. In respect of the principles of law which are applicable on applications of this kind, the decision of the Supreme Court in *Talbot v. McCann FitzGerald and Others* [Unreported, Supreme Court, Denham J., 26th March, 2009] is of importance. Whilst that pertained to the revisiting of a Supreme Court judgment (and the Constitution expressly provides that its decisions are in all cases to be final and conclusive), Denham J. (as she then was) refers to the principle that the common law and public policy recognises the desire for finality in proceedings inter partes: I am of the view that the common law and public policy recognition of the desire for finality applies generally. Denham J. quoted with approval from the judgment of McGuinness J. in *Bula Ltd. v. Tara Mines Limited (No. 6)* [2000] 4 I.R. 412 where she said:-

> "In summary, whilst very great weight must be given to the principle of finality and to the provisions of Article 34.4.6, this court has a jurisdiction to review and if necessary set aside what appears to have been a final order in circumstances where the court's duty to protect constitutional rights or natural justice arises. Such circumstances can only be to a high degree exceptional, and a very heavy onus lies on the applicants to establish that such exceptional circumstances exist. It is in this context that this court must consider the facts of the present case and the arguments put forward by the

applicants."

17. The application to set aside the order in that case was on the grounds of a reasonably held apprehension that the appellant would not have a fair hearing from an impartial judge and I think it is fair to say that the subsequent case of *Kenny v. Trinity College and Anor.* [2007] I.E.S.C. 42 was an application similarly based upon the concept of objective bias.

18. Denham J. also quoted with approval from the judgment of Hamilton C.J. in In re *Greendale Developments Limited (No. 3)* [2000] 2 I.R. 514, where the application was made on the grounds that the applicants asserted that they did not have a proper opportunity to argue what was described as "the core issue" but the application to set-aside was refused having regard to the provisions of the Constitution to the effect that the decisions of the Supreme Court are final and conclusive. She also referred to her own judgment in that case and in particular that portion thereof where she said:-

> "The Court has to balance the application against the jurisprudence of the common law and the Constitution, of the finality of the order. Whilst the Supreme Court is guardian of constitutional rights it must also protect the administration of justice which includes the concept of finality in litigation."

19. In *Talbot*, Denham J. said that in order to succeed in setting aside the earlier order of the Court, the plaintiff would have to establish that the circumstances of the case were such as to give rise to what was described by her as "this rare and exceptional jurisdiction" and show that if jurisdiction arose there would be good reason to exercise it, such as establishing that there was objective bias.

20. Denham J. quoted from the judgment of Finlay C.J. *in Belville Holdings v. Revenue Commissioners* [1994] 1 I.L.R.M. 29:-

> 'So far as I am aware, the only cases in which the Court …(can interfere) … after the passing and entering of the judgment are these -
>
> > 1. Where there has been an accidental slip in the judgment as drawn up in which case the Court has power to rectify it …
> >
> > 2. When the Court itself finds that the judgment as drawn up does not correctly state what the Court actually decided and intended.'"

21. Denham J. further quoted from his judgment as follows:-

> "I am satisfied that these expressions of opinion validly represent what the true common law principle concerning this question. I would emphasise, however, that it is only in special or unusual circumstances that an amendment of an order passed and perfected, where the order is of a final nature, should be made by the court. The finality of proceedings both at the level of trial and, possibly more particularly, at the level of ultimate appeal is a fundamental importance to the certainty of the administration of law and should not likely be breached."

22. Denham J. herself went on to say that:-

> "The inherent jurisdiction referred to above enables a court to vary a final order so that the true intent of the court is carried out. However, an action may be brought to set aside an order obtained by fraud. This would be by way of new and separate proceedings from the original action."

23. I have been referred to *O'Donovan and Others v. Kirby* (Unreported, Circuit Court, McCartan J., 25th May, 2001) which was concerned with a settlement. He referred to Seton's judgments and orders (Vol. 1, p. 124) with reference to the jurisdiction to set aside consent orders and to the effect that they cannot be varied or discharged unless obtained by fraud or collusion or were the fruit of an agreement contrary to the policy of the court – a proposition not to be doubted.

24. I am of the view that the position is different with respect to an attempt to vary, set aside or discharge judgments of the Supreme Court from that which applies at common law and in any event that different considerations apply to any such applications where this Court is concerned, per se, since it is not a final court. It seems to me that the traditional common law principles referred to by Finlay C.J. are applicable here since the absolute order can only be regarded as a final judgment. This is not a case, obviously, where there has been an accidental slip or clerical error in the order and one is accordingly concerned firstly with the capacity to discharge, vary or set aside a judgment where it does not, as drawn up, correctly state what the court actually decided and intended and secondly, the power to set aside a judgment for fraud. Though Denham J. points out that this must be done by separate proceedings having regard to the nature of applications for orders of garnishee I take the view that a plenary action is not necessary at least in the present case and that the application to set aside can be dealt with on motion.

25. In terms of the evidence before me for the purpose of this application I do not propose to set it out in *extenso* but will refer to what appear to me to be the salient matters.

26. I have already referred to the plaintiff's medical reports (and my view of them) but in the affidavit of 22nd June (at page 3) the defendant asserts that, and I am sure that this is the case, he has been under the care of his general practitioner, and that due to complications after his heart surgery on 10th September, 2010, he is suffering from post-traumatic stress disorder (attending for psychiatric counselling as part of his rehabilitation) and that when he was recuperating from surgery (and we know the period of recuperation) certain matters "of record in the Circuit Court, and High Court were listed for hearing on 10th and 13th December, 2010". He says that both courts were informed of his incapacity and he said that he thought that this Court would adjourn the matter. He says at para. 5 that he was "taken by surprise" that the court heard an application on 13th December, 2010 to make the garnishee order absolute, knowing (as he put it) his state of health and, the more so, that I had granted him leave on 16th March, 2010 to seek to set aside the Circuit Court judgment.

27. At paragraph 8 of the same affidavit he says that new evidence emerged on 21st June, 2011 which, as he puts it, indicates that the plaintiff concealed material facts that should have been disclosed inter alia in this court and relating to the garnishee matter. The defendant asserts that the plaintiff will be paid twice for "the same fee billing" if the garnishee complies with the order absolute (in circumstances where the garnishee, is, he asserts, was aware that the judgment for €15,502.63 includes fees in relation to *Roche v. Griffin).* In that paragraph he further asserts that Messrs. O'Rourke Reid (solicitors for the defendant in the personal injuries action and the garnishee) "is holding €5,000 for costs awarded to Liam Hackett covering the years between 1999 – 2003 when he represented me in the accident injury case of *Patrick Roche v. Jason Griffin*". There does not appear to be any doubt about that. At

para. 8 of his affidavit of 27th June the defendant says that his counsel (Mr. Seebrough) became ill in April 2010; his solicitor Mr. Looney was accordingly left without counsel, that the defendant applied for civil legal aid (which was one of the reasons for an adjournment of the matter from 16th March to 13th December) and refers also there to his heart the "new evidence".

28. He asserts that the plaintiff "concealed material facts" that should have been disclosed to the High Court and Circuit Court when it was hearing matters relating to the garnishee application and in particular the fact that the garnishee, O'Rourke Reid solicitors, were holding funds for Liam Hackett, thought to be "approximately €5,000"and as affirmed by David McAvin…." (his ultimate solicitor in the personal injuries action). The actual amount seems to be €4,381.50. Mr. Dixon, counsel for the defendant has explicitly said that credit will be afforded to the defendant in respect of that amount and, frankly, I do not think there is any reason to doubt that that could ever itself have been in doubt.

29. He refers to the apparently unsuccessful attempt to register a judgment mortgage (which is not referred to in any of the plaintiff's affidavits) but which I am informed (and I do not see any reason to doubt it), by counsel that no such registration occurred. He also effectively alleges lack of candour or want of disclosure (by which it seems proper to conclude a failure to inform either my colleague de Valera J., the Circuit Court or any judge of this Court, including myself, who may have dealt with the matter) that a portion of the plaintiff's costs were to be paid by the defendant following the settlement of the personal injuries action and also in respect of the judgment mortgage.

30. Having regard to all of the papers before me and the oral submissions I think that I can correctly summarize the case made, ultimately, by the defendant as follows.

31. Firstly, that there was concealment by the plaintiff of the fact that a sum in costs was agreed to be paid apparently between Mr. McAvin and Messrs O'Rourke Reid to the plaintiff in respect of the plaintiff's conduct, for a period, of the personal injuries action, (which I infer was paid before the 13th December since it was received by Mr. McAvin for onward transmission, to the plaintiff under cover of a letter of the 16th August 2010 from Messrs O'Rourke Reid). In terms of the allegation of concealment it is fair to say that the defendant's proposition must be regarded as being to the effect that there was both a failure to disclose the entitlement to payment (and payment had not actually, then been made) on the occasion of de Valera J.'s order or ultimately to me until the 22nd June last. This submission is associated with the proposition that there was want of candour or good faith – though the latter primarily pertains to an issue pertaining to a judgment mortgage. It was submitted on behalf of the defendant by Mr. Clohessy that had I known about this before the order absolute had been made, it could well have made a difference and agreed with me when I sought to summarise his allegation as meaning that there was "double counting" on the part of the plaintiff, or, perhaps it might be better put as double recovery. He submitted that the order absolute would not have been in the amount of €15,000 but, in effect, less. He referred to the Criminal Justice (Theft and Fraud Offences) Act in that context. It is fair to say he alleged that this constituted a fraud and was relied upon to say (and I paraphrase) that the plaintiff's application was tainted from the start so that no order could ultimately be made in favour or that the existing order should be set-aside, having regard to the jurisdiction to set-aside even final judgment for fraud.

32. Secondly, it was contended that the plaintiff could not enforce the judgment against the defendant with an address at 22 Silverwood Rock, Shire Road, Ferry Bank, County Kilkenny on the footing that enforcement could only be effected against the person named in the civil bill whose address referred to as Waterford, in County Waterford. It was submitted that the record reflected that the defendant was not one and the same person as named in the civil bill. There was no evidence before me to this effect but I was told by counsel for the plaintiff that the issue of the address and identity had been fully trashed out in the Circuit Court. I have no reason whatsoever to doubt what counsel told me but even if I were to discount it completely it is plain that the man against whom judgment was recovered in the Circuit Court, who was the plaintiff in and compromised personal injury proceedings, and was entitled to receive payment of damages accordingly, the judgment debtor whose funds are held by the garnishee and who is now before the Court is one and the same person. The truth is that this proposition really overlaps with the grounds relied upon to challenge the judgment, an issue which I do not propose to revisit. In effect an error as to the address is being relied upon in the face of all of the facts being an error which, whatever, else, was made before judgment. That cannot be a ground for objection to the absolute order of garnishee or supports this application.

33. Thirdly, reference was made to the fact that the County Registrar apparently rejected any attempt by the plaintiff to register a judgment mortgage against the defendant's property. I think that I can proceed on the basis that this was because of issues pertaining to addresses. There is no reason to think, and I accept counsel for the plaintiff's assertion, that a judgment mortgage was actually registered. It was submitted to me that there was, as a minimum, a want of candour or disclosure also under this head with the same consequence as that above, namely rendering it appropriate to refuse the absolute order and, now, at this stage discharge it.

34. Fourthly, the defendant also relied upon the fact of his ill health and the consequent failure or incapacity on his part to appear on the 13th December and I believe that I have adequately addressed that ground already especially at para. 11 and para. 26 above and for the avoidance of doubt I reject. Further, and again for the avoidance of doubt there is no "new" information in the reports post 13th December of such significance as to alter my view.

35. In the course of submissions the defendants referred to the decision of Clarke J. in *Banbrig v. Cobley* (Unreported, 25th February 2005) pertaining to non-disclosure, in the case of an application for a *mareva* injunction. It is well established as set out in that decision that in applying for equitable relief (and this is something on which there must be special emphasis in the case of an ex-parte application), material must be disclosed which might in any way affect the mind of the Court. Clarke J. said that:

> "…It would seem that the test by reference to which materiality should be judged is one of whether objectively speaking the fact could reasonably be regarded as material, with materiality to be considered in a reasonable and not excessive manner".

It seems to me, in the first instance, that the judgment mortgage issue is not material because the concept must be "construed in a reasonable and not excessive manner". By no stretch of the imagination could the fact that an unsuccessful step had been taken with a view to registering a judgment mortgage have effected the court's decision (whether at conditional order or a later stage) in a garnishee matter. It would simply not be relevant one way or the other, as a matter of principle and even if I am wrong in taking the view that it would not be relevant in principle, it was certainly not relevant in this case, as a practicality. Thus, even if there was some breach of obligation on the part of the plaintiff in terms of disclosure of this aspect of the matter, it would not be a case which could give rise, in my view, to refusal of relief or grant of this application.

36. As to whether or not what I might shortly term fraud or want of disclosure (in respect of the sum of €4,381.50) affect the order in the nature of a Garnishee application one attaches the debt and, thereafter, one seeks to have an absolute order made providing

for payment of the debt, together with any interests and costs. I do not think there is any realistic basis for suggesting that credit would not have been afforded to the defendant by the plaintiff in determining the ultimate sum to be paid out of the €50,000 in respect of the amount payable by O'Rourke Reid to Mr. McAvin and ultimately to Mr. Hackett. I do not think that one could or should presume that someone would behave wrongfully without evidence and it seems to me to be right to accept that when counsel for the plaintiff acknowledged to me that an appropriate reduction would be given for this amount from the total liability when that was ascertained, one should have no concerns under that head.

37. There is little doubt but that it would have been best to have deposed to this fact in the affidavit, grounding the application to de Valera J. and, in any event, to have brought it to my attention on or before the 13th December. Various definitions have been given in different contexts to the term "fraud" and it is well established that it is not to be lightly concluded that it has arisen. I am not prepared to conclude that fraud in the legal sense has arisen in the present case. It seems to me that a mere error of judgment or departure from best practice (which is what we have here in terms of failing to refer to the sum payable in costs) is the worst which may have occurred. In so far as it may be alleged that, short of fraud, there was a want of disclosure analogous to that alleged in the case of the judgment mortgage it seems to me that, similarly, the material is not of such significance as to affect the entitlement to the absolute order or be capable of being relied upon for the purpose of this application.

38. The only final issue is whether or not the order is open to question on the grounds that it does not reflect my intention. My intention was, that the plaintiff be paid whatever is due to him out of the fund held by the garnishee, whether that be the judgment debt proper or interest or costs on the judgment or the costs of the garnishee application. In the present context it appears that, in fact, the amount due was less than might have supposed (and one does not know how much precisely is due because it will be necessary to calculate interest as well as costs). Obviously one would never have had an intention that interest would run on the sum in costs payable under the terms of settlement of the personal injuries action as of the date of its payment which I take to be, for the avoidance of complexity, the 16th August, 2010. I can say that I would have intended by definition that credit be given for it. Thus, I will direct that the order be amended, for the purpose of ensuring that there is no doubt as to my intention, to the effect that the interest will run on the full amount from 18th February, 2009 to the 16th August, 2010 and on the lesser amount of €11,122.13 from that date until payment: thus, in that event the first operative part of the order (i.e. that beginning, "it is ordered that the said garnishee do forthwith pay…") will read as follows:

> "It is ordered that the said garnishee do forthwith pay the plaintiff €11,122.13 for judgment debt and costs, together with interest as follows.
>
> > (a) Interest at the rate of 8% per annum on the sum of €15,502.63 from the 18th February 2009 to 16th August 2010,
> >
> > (b) Interest at the rate of 8% per annum on the sum of €11,122.13 from the 16th August 2010 until payment.

together with the costs of these garnishee proceedings, including the costs reserved by the said order when taxed and that in default thereof execution may issue for the same."

39. Were the defendant not a litigant in person I would make no such change since the *bona fides* of the plaintiff is not in doubt – I do so to avoid all potential difficulty.

40. There were attempts made to enter upon the merits of the original judgment (in the course of which emphasis was placed upon the issue of the address of the defendant, it was contended, erroneously stated) and also to revisit the issue of service. (I think that my view has been clearly expressed in respect of those aspects.) There are references in the material before me and I here refer especially to the affidavit of 27th June and the submissions, to the conduct of the personal injuries litigation and related matters but I need hardly say that these are not relevant even though they extend to allegations of, to put it no higher, deficiencies by the plaintiff in the provision of his professional services to the defendant.

41. I therefore refuse the relief sought.