

## THE HIGH COURT

[2012 No: 57SA]

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

BETWEEN

JACOB A. ESAN

APPELLANT

AND

IVAN WILLIAMS

SOLICITOR/RESPONDENT

## JUDGMENT of Kearns P. delivered on the 21st day of January, 2013

By notice of motion returned on 23rd July, 2012, Jacob Esan ('the appellant') appeals against the finding of the Solicitors Disciplinary Tribunal ('the Tribunal'), dated 22nd May, 2012, that there was no *prima facie* case for inquiry into the conduct of Ivan Williams, practising under the style and title of Williams Solicitors, 29/30 Dame Street, Dublin 2 ('the respondent'). This matter was adjourned in the Solicitor's List on a number of occasions.

Whilst the notice of motion states that the appellant is appealing the finding of the Tribunal that there is no *prima facie* case for inquiry into the conduct of the respondent, the report of the Tribunal dated 6th June, 2012 found that there was a *prima facie* case of misconduct on the part of the respondent solicitor for inquiry for allegedly putting the appellant under pressure to accept an offer in settlement negotiations that was worthless to him.

The following allegations of misconduct were made by the appellant against the respondent:

- that the respondent agreed to strike out the appellant's motion on 15th March, 2010 without the appellant's approval. (This appears to be a motion for judgement in default of defence. The defendant in Mr. Esan's case was late in delivering a defence in the matter of *Jacob Esan v. Elizabeth Gallagher* where Mr. Esan was claiming he was owed €44,177.10 by the defendant.);
- after 15th March, 2010 it took the respondent twelve months to get the case back to court;
- that the respondent put him under pressure to accept a €5,000 offer out of €44,177.10 owing to him.
- that the respondent settled the appellant's case for €5,000 without his approval; and
- that the respondent acted contrary to the appellant's wish.

The appellant received a letter from the Tribunal dated 16th April, 2012 informing him that there was a *prima facie* case of misconduct on the part of the respondent for exerting undue pressure and a hearing was set for 22nd May, 2012. All his other complaints were thrown out. The appellant and the respondent appeared at the inquiry on their own behalves. The Tribunal found that the respondent was not guilty of misconduct on the evidence adduced. It is this finding which the appellant appeals against in the within motion.

## AFFIDAVIT OF THE APPELLANT

In the appellant's affidavit filed on 29th June, 2012, Mr. Esan refers to the Tribunal inquiry on 22nd May, 2012 and avers that the respondent did not tender any further documents to the inquiry to defend himself apart from the documentation he already submitted as he did not have anything to say to defend himself.

The appellant makes a number of allegations against Mr. Kinsella BL which are not relevant and have no bearing on the within appeal.

The appellant expresses surprise that the Tribunal did not see any traces of pressure in the fact that the respondent and Mr. Kinsella BL spent hours talking to him at court on 31st March, 2011. The appellant denies that he agreed to settle his action for €5,000. The appellant also denies that he attended a meeting with the respondent and his counsel, and instead went to take medication for high blood pressure. The appellant asks for his complaints to be looked at and for the decision of the Tribunal be reversed.

## AFFIDAVIT OF THE RESPONDENT

In the respondent's replying affidavit filed on 16th August, 2012, he sets out the background to the matter as follows: the respondent took initial instructions from the appellant in January 2009 with regard to a debt the appellant claimed was due and owing to his business, AM Ventures, by Elizabeth Gallagher in respect of security services rendered. The respondent issued High Court proceedings on the appellant's behalf. The matter was listed for hearing on 5th April, 2011 but settled on the afternoon of 31st March, 2011.

The respondent rejects any suggestion that he pressurised the appellant into settling the case. At paragraph 5 of the respondent's affidavit, he refers to his contemporaneous attendance note of the consultation between himself, the appellant and counsel, Mr. Kinsella BL. The respondent states that it is clear from the attendance note that the appellant was given every opportunity to run his case if he so wished. The respondent also avers that at approximately 12pm on 31st March, 2011, the appellant advised that he required time to think about the offer of €5,000, and that he had another meeting at O'Connell Street at that time. The respondent states that when the appellant returned, he instructed that he wanted to settle the matter, which the respondent and counsel duly acted upon.

The respondent highlights the appellant's statements to the Law Society and the Tribunal in which the appellant records that he 'said ok and walk away', as a clear indication that the appellant accepted the settlement. Furthermore, at paragraph 6 of his affidavit, the respondent quotes an extract from the appellant's statement to the Society, read into evidence at the hearing of the Tribunal, in which the appellant says *inter alia* '...if I say yes Thursday, and on Monday I come to your office and explain my situation to you and told you that I want to go ahead with my case, you are my solicitor all you need to do is tell the court through your barrister that my client is not happy with the settlement, he wants to go ahead with the case...'

The respondent says it is clear from this extract that the appellant instructed him to settle the case. The respondent avers that when the appellant was advised that he could not unilaterally rescind the settlement agreement, he made allegations of collusion and of being pressurised into accepting settlement.

At paragraphs 9 and 10 of the respondent's affidavit, he details the appellant's acceptance of the settlement offer and his subsequent change of mind. The respondent also states that on the morning of 31st March, 2011 he had applied to come off record along with counsel and that they had waived their fees in order to obtain the best possible outcome for the appellant. There was therefore no motivation on the part of the respondent to pressurise the appellant into settling the case.

#### **DECISION**

Having carefully reviewed all of the papers before me, including the affidavits and transcript of the Tribunal inquiry, I find that the appellant has failed to adduce adequate evidence to discharge the burden of proof on him to prove that the respondent pressurised him into accepting the settlement and is therefore guilty of misconduct. As against this, the respondent's version of events is supported by supporting documentation such as contemporaneous attendance notes and corroboration by Mr Kinsella, BL. I therefore make no finding of misconduct against the respondent solicitor and dismiss the appeal.