

THE HIGH COURT

[2012 No: 40SA]

IN THE MATTER OF THE SOLICITORS ACTS 1954 - 2008

BETWEEN

PATRICK MCCARTHY SENIOR

APPELLANT

AND

SOLICITORS DISCIPLINARY TRIBUNAL

RESPONDENT

JUDGMENT of Kearns P. delivered on the 30th day of July, 2012

This is an appeal by Patrick McCarthy Senior ("the appellant") against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") dated 20th April, 2012 that there is no prima facie case of misconduct for inquiry into the conduct of Terence F. Casey, a solicitor of Terence F. Casey & Co., 99 College Street, Killarney, Co. Kerry ("the respondent").

On 16th December, 2011 the appellant herein applied to the Tribunal for an inquiry into the alleged misconduct of the respondent solicitor. Over the following months, affidavits were submitted by the appellant and the respondent. On 20th April, 2012 the Tribunal found that this is a matter which could or ought properly to be canvassed in a forum other than the Tribunal.

By notice of motion and grounding affidavit filed by the appellant on 11th June, 2012 the appellant seeks to appeal the findings of the Tribunal on the basis that the conduct of the respondent solicitor breaches the Solicitor Disciplinary Rules, 2003 1 (a) (v) as constituting conduct tending to bring the solicitors profession into disrepute. The appellant also states that he is unsure of the interpretation of the ruling of the Tribunal that the issues highlighted should be canvassed in a forum other than that of the Tribunal.

BACKGROUND

This matter relates to the purchase by the appellant of apartments in a development in Fairgreen, Mallow, Co. Cork for investment purposes. In the appellant's complaint to the Tribunal, the appellant alleged misconduct on the part of the respondent on 7 grounds in connection with the purchase of the apartments and their qualification for section 23 tax relief. In response to each of the 7 complaints, the Tribunal found that they were matters which could or ought properly to be canvassed in a forum other than the Tribunal.

RULING

Having examined in detail the complaint of the appellant to the Society dated 16th December, 2011, the replying affidavit of the respondent solicitor sworn on 8th February, 2012, the affidavits of the appellant sworn on 8th March, 2012, and 11th June, 2012 and all accompanying documentation and correspondence, I affirm the decision of the Tribunal that this is not the appropriate forum to resolve this issue. The events described by the appellant and respondent bear the characteristics of a dispute between them rather than actionable misconduct per se on the part of the respondent. Furthermore, the remedies available in this forum are not suitable to recompense the appellant for the loss allegedly incurred by him as a result of the respondent's alleged misconduct. The Court notes the avenues explored by the appellant in seeking redress however, the appellant will appreciate that it is not for this Court to advise him on alternative legal options available to him.

I therefore dismiss the appeal with costs in favour of the respondent.