

**THE HIGH COURT**

**2010 30 SA**

**IN THE MATTER OF SOLICITORS ACT 1954 – 2008 AND IN THE MATTER OF SEAN ACTON SOLICITOR OF MICHAEL MCDARBY & COMPANY SOLICITORS, GLEBE STREET, BALLINROBE, COUNTY MAYO**

**ON THE APPLICATION OF MANDY PLACE**

**APPELLANT**

**JUDGMENT of Kearns P. delivered on the 14th day of June, 2010**

This is an appeal brought pursuant to s. 7 of the Solicitors (Amendment) Act, 1960 (as substituted by s. 17 of the Solicitors (Amendment) Act, 1994 and amended by s. 9 of the Solicitors (Amendment) Act, 2002) whereby the appellant, Mandy Place, seeks to appeal to the High Court against a decision of the Solicitors Disciplinary Tribunal made on 11th February, 2010 which held that there was no prima facie of misconduct established by the appellant in respect of certain allegations brought by her against the respondent solicitor as set out in the affidavit of Mandy Place sworn on 13th January, 2009.

I have read all the papers. The first point that arises is that this appeal is out of time and fails on that ground alone.

Given that the appellant is unrepresented, I will nonetheless deal with the merits of her case rather than simply ruling that the appeal is out of time.

The complaint of the appellant essentially arises out of the alleged mishandling of the plaintiff's claim for damages arising out of a "slip and fall" accident which the plaintiff sustained at Shantalla National School in Galway on 21st May, 2003.

The appellant's son was a student of the school and on the date in question the appellant went to the school to collect her child when she slipped and fell on a step at the entrance of the school premises as a result of which she suffered a dislocated shoulder and a fracture of her humerus. This injury caused her to be out of work for four months.

While the appellant had previously instructed some other firm of solicitors, she instructed the respondent solicitor in relation to her proposed claim in October, 2005. It is clear from the affidavit of Sean Acton sworn herein that he gave appropriate advice to the appellant when he pointed out to her the difficulties in succeeding in a claim of this nature. The account furnished to him, and to her other professional witnesses, went no further than to suggest that the plaintiff had slipped on a wet marble strip just inside the doorway. It had been raining on the day in question and obviously the ingress and passage of other pedestrians through the entrance had caused this wetness to be present.

Notwithstanding the appellant's own evidence and that of an engineer given in court, the learned Circuit Court judge dismissed the claim. In the absence of any evidence suggesting the premises were defective or that the school authorities had failed to exercise proper care for the safety of persons entering the school, it was hardly open to him to reach any other conclusion.

The appellant at the hearing suggested that the presence of some linoleum covering had caused or contributed to her accident, but this was an account which was only first led on the day of the hearing itself.

I am satisfied that the respondent solicitor took all necessary and appropriate steps to prepare this case for hearing, having retained a professional engineer and an orthopaedic surgeon for that purpose. He also retained the services of a competent counsel to conduct the hearing on the appellant's behalf.

I have read the grounding affidavit sworn by the appellant in support of her appeal and that sworn by Mr Acton on 13th May, 2010 and am satisfied no new matter or consideration has arisen which would suggest that the Tribunal in any way was in error in reaching the conclusion which it did that the appellant had failed to establish even a prima facie case of misconduct on the part of the respondent solicitor. In those circumstances I would dismiss the appeal.