

## THE HIGH COURT

Record No. 2014/92/SA

## IN THE MATTER OF:/

## THE SOLICITORS ACTS 1954 TO 2011

AND

MICHAEL SHANLEY

A Solicitor

AND

KEVIN DUNNE

Appellant

**Judgment of Kearns P. delivered on 3rd day of November, 2014**

By notice of motion dated 11th July 2014 the appellant appeals against the finding of the Solicitors Disciplinary Tribunal ('the Tribunal') dated 20th June 2014 that there is no prima facie case for inquiry into the conduct of the conduct of the respondent solicitor Mr. Michael J. Shanley.

**Background**

The appellant engaged the services of the respondent solicitor in relation to various property transactions and business dealings dating back a number of years. Regrettably however, it is clear that in 2011 their relationship began to break down. In August 2011 the appellant wrote to the respondent solicitor raising concerns in relation to the respondent's handling of recent litigation involving a company of which the appellant was a director and in a follow up letter he informed the respondent that *"I have become very concerned recently with the services you are providing me with...as a result of your actions irreparable damage has been inflicted on our client/solicitor relationship. I write now to inform you that I no longer wish you to act as my solicitor..."*

The appellant subsequently made a complaint to the Law Society of Ireland Complaints and Client Relations Section ('CCRS') on 25th November 2011. Mr. Dunne stated that the complaint related to the respondent's alleged *"failure to register a judgment obtained by XK Structures Ltd., a company of which I am a director, against Barrack Construction Ltd."* Mr. Tony Watson, solicitor in the CCRS notified the respondent solicitor of this complaint on 6th December 2011 and invited him to furnish written observations. A large amount of subsequent correspondence between the appellant, the respondent, and Mr. Watson of the CCRS is exhibited and a number of separate complaints were raised by Mr. Dunne, in particular by letters dated 6th, 18th, 19th, 20th January 2012.

On 10th May 2013 Mr Watson wrote to the respondent solicitor informing him of his belief that there was little merit to some of Mr Dunne's complaints and that he was satisfied most of the issues had been addressed. Mr. Watson requested further information into an apparently new facet of the complaint which had been raised by Mr Dunne on 28th March 2013 and expressed his wish to bring the matter to a conclusion. A file note of Mr. Shanley's response to Mr. Watson's queries is exhibited. The CCRS file on the matter was then closed prompting the appellant to make an application to the Tribunal.

**Application to the Tribunal**

On 6th August 2013 Mr. Dunne made an application to the Tribunal for an inquiry into the conduct of the respondent solicitor. The respondent solicitor filed a replying affidavit on 27th September 2013. A further affidavit of the appellant dated 27th November 2013 is also exhibited. The appellant's complaint related to five matters which can be briefly summarised as follows –

*1. Bank of Scotland Ireland charge*

Mr. Dunne states that following the construction of a second property on a site at Folio WH14888F the charge held by Allied Irish Bank over the property *"was to be removed and replaced by a charge in favour of Bank of Scotland Ireland who had bought out the mortgage previously held by AIB"*. Mr Dunne asserts that the respondent solicitor failed to register this charge in accordance with the undertaking he had given to Bank of Scotland Ireland and that a number of difficulties have arisen for himself and his wife as a result. It is also alleged that the respondent divided the folio without consent from Mr. Dunne or his wife.

The respondent solicitor submits in his affidavit to the SDT that any issue in relation to this undertaking is a matter for Bank of Scotland Ireland and not the appellant.

*2. Windsor Style Developments*

Mr. Dunne states that XK Structures Ltd. engaged the services of the respondent in proceedings against Windsor Style Developments and subsequently failed to return the sum of €10,000 which was collected. It is clear from the correspondence and his replying affidavit that the respondent solicitor's position is that this money was to be retained to discharge legal fees owed to the firm and that this was done with the full consent and authority of the appellant. The respondent further states that this was complex litigation and this sum represents a small amount of the overall fees currently still due.

*3. Deposit for Ballymahon Property*

Mr. Dunne complained to the SDT that the respondent was retained by a company called KBC Carpentry which provided the respondent with the sum of €10,000 as a deposit for the purchase of a property in Ballymahon, Co. Longford. When the purchase did not proceed the sum was retained by the respondent. The appellant contends that this was done without consent.

The respondent's affidavit to the SDT states that the correspondence exhibited shows there was no impropriety in

relation to this matter and that there are extensive fees remain outstanding to his firm from KBC Carpentry.

#### *4. Unregistered Judgment/Barrack Construction*

Mr Dunne states that the respondent was engaged by XK Structures Ltd. to seek and register a judgment against Barrack Construction Ltd. It is claimed that the respondent then failed to register the judgment before Barrack Construction entered into receivership. The respondent states that after judgment was awarded his firm and the firm acting for Barrack Construction Ltd. received specific instructions that the matter would be subject to ongoing negotiation between the clients. Mr. Dunne denies this and states that had any negotiations been contemplated the respondent's firm would have been retained. The respondent further submits that his firm was never paid in relation to this matter and that "it would be inconceivable that this firm would do any further work on a file in circumstances where the firm had not had their fees discharged."

#### *5. VAT invoices*

It is claimed that the respondent solicitor failed to provide the appellant with a single VAT invoice for any work done. This matter arose frequently in correspondence with Mr. Watson and copies of various VAT invoices are exhibited. The appellant states that a number of VAT invoices remain outstanding. The respondent contends that any VAT invoices requested have already been furnished.

### **Decision of the Tribunal**

The decision of the Tribunal was issued on 20th June 2014. In arriving at its decision the Tribunal had regard to the application for an inquiry, the applicant's supporting affidavit, the affidavit of the respondent, and a further replying affidavit of the applicant as well as all documents exhibited.

In relation to the 'Bank of Scotland Ireland charge', the Tribunal accepted the respondent's contention that any issue in relation to the undertaking is matter for the Bank. The complaint in relation to the splitting of the folio was also rejected on the grounds that *"the transfer exhibited by the respondent solicitor in his replying affidavit (pages 18 to 21) clearly shows that the applicant and his wife executed the transfer splitting the land in question."*

The Tribunal was of the view that *"the course of dealings between the parties is evidence that the respondent solicitor had authority to retain the sum of €10,000"* in relation to the Windsor Style Developments. A similar finding was made in relation to the Ballymahon deposit.

In relation to the Barrack Construction matter, the Tribunal found that *"there is no evidence that the applicant instructed the respondent solicitor to register the judgement"*.

In relation to the alleged failure to provide VAT invoices the Tribunal concluded that as of the date of the swearing of his grounding affidavit on 6th August the applicant was in possession of numerous invoices which had been furnished by the respondent solicitor. Furthermore, *"there is no evidence as to what invoices, if any, are outstanding."*

### **The present appeal**

In his affidavit of 9th July 2014 the appellant contends that the Tribunal erred in its decision in relation to the Barrack Construction matter, the Windsor Style Developments fees dispute, and the deposit towards the Ballymahon property. The Court has given careful consideration to the various affidavits, correspondence, and documentation exhibited as well as the impugned decision of the Tribunal.

The appellant contends that in finding that *"there is no evidence that the applicant instructed the respondent solicitor to register the judgement"* in relation to the Barrack Construction matter the Tribunal failed to have due regard to the evidence exhibited. The appellant primarily relies on a letter he sent to the respondent dated 15th August 2011 in which he states *"I want you without delay to have the initial judgment registered"*. This letter was sent almost one year after the judgment was awarded. I am satisfied that the Tribunal considered all of the correspondence, including this letter and was satisfied that there was no evidence to contradict the respondent's version of events that there was to be a period of negotiation between the parties following the judgment.

As to the fees for the Windsor Style Developments and Ballymahon matters, the appellant asserts that it is *"inconsistent for the Tribunal to reject this complaint relying only on what it believes to have been the course of dealings between the parties in circumstances where it did not take the course of dealings into account"* in relation to Barrack Construction matter *"but instead made a determination based on the absence of evidence of instruction."* It is further submitted that there is a *"total absence of evidence of instruction"* in relation to these two matters. I am satisfied having regard to all of the evidence that the appellant engaged the services of the respondent solicitor in relation to a number of property and business dealings with different companies of which the appellant was a director. It follows that the respondent was entitled to be paid for his services and I am satisfied that the monies in question constituted part payment of professional fees. The appellant has submitted no additional evidence to warrant a departure from the finding of the Tribunal

### **Decision**

For the reasons outlined above, the appeal is therefore dismissed.