

THE HIGH COURT

[Record No. 2016/4024 P.]

BETWEEN

ADRIAN SULLIVAN

PLAINTIFF

AND

PATRICK REILLY AND CHISTIE LEAHY AND MOTOR INSURERS BUREAU OF IRELAND

DEFENDANTS

[Record No. 2009/10739 P.]

BETWEEN

STEFANIE ABRAMS

PLAINTIFF

AND

SOUTH TIPPERARY GENERAL HOSPITAL

DEFENDANT

JUDGMENT of Mr. Justice Binchy delivered on the 13th day of October, 2017

1. These matters originally came before the court by way of notice of motion dated 21st November, and returnable initially on 12th October, 2016. By the motion, in each case, the plaintiffs (who are husband and wife) sought an order "pursuant to the Solicitors Acts 1954 to 2011 directing Sweeney solicitors, Marlborough House, Marlborough Street, in the County of Cork, their servants and/or agents to release all files, documents, books, records and correspondence which pertain to the plaintiff (S.) herein to Gary Matthews, solicitors."

2. As may be inferred from the face of the motion, the plaintiffs had in each case instructed Sweeney solicitors to act on their behalf in the pursuit of proceedings which in each case involved claims for damages in respect of personal injuries allegedly sustained by each of the plaintiffs on different occasions. However, the plaintiffs decided, as is their entitlement, to change their solicitors and instructed Gary Matthews solicitors to act on their behalf. The issues involved in each case are the same: but for the purpose of this decision, and in the interest of convenience, I will confine myself to the specific facts arising in the case of Mr. Sullivan, unless otherwise stated.

3. Mr. Sullivan instructed Gary Matthews solicitors on 27th July, 2016. At the request of those solicitors, Mr. Sullivan completed a form of authority authorising Sweeney solicitors to transfer his files to Gary Matthews solicitors. The authority is dated 27th July, 2016 and is comprehensive stating, *inter alia*:-

1. that Gary Matthews solicitors have been appointed by Mr. Sullivan to act on his behalf in the proceedings; and
2. that Sweeney solicitors are authorised to release his files and documents to Gary Matthews solicitors; and
3. that Sweeney solicitors are released from an undertaking given by them on behalf of Mr. Sullivan to Claim Finance Ltd., and instructing Gary Matthews solicitors to give an undertaking to Claim Finance Ltd. in lieu thereof; and
4. that Gary Matthews solicitors are instructed to discharge the reasonable costs incurred by the plaintiff to Sweeney solicitors at the conclusion of the proceedings (in the event of a successful conclusion) and in default of agreement, to refer the determination of costs to a taxing master, for the purpose of taxation of costs on a solicitor and own client basis.

4. Gary Matthews solicitors wrote, on 28th July, 2016 to Sweeney solicitors, sending a copy of this authority and requesting Sweeney solicitors to release Mr. Sullivan's file. Not having received a reply, Gary Matthews solicitors sent a reminder on 19th August.

5. On 25th August, 2016, Sweeney solicitors replied stating that the files are ready for collection, but continuing:-

"However, we attach herewith our professional fee notes for each file and look forward to your proposals regarding discharge of same."

On the same date, Sweeney solicitors wrote to Claim Finance and Administration Co. Ltd. ("Claim Finance") (with a copy to Gary Matthews and Co. solicitors) advising that company, to whom they had given an undertaking in respect of funds advanced to the plaintiff, that Gary Matthews solicitors would be taking over the undertaking and requesting "the necessary paperwork to discharge this office from the undertaking and to forward to the new solicitor to take up on behalf of Mr. Sullivan".

6. The above gave rise to three letters in reply from Gary Matthews solicitors. In one of those letters it is stated:-

"The firm of Gary Matthews solicitors will not under any circumstances take over this undertaking or liaise directly with Claim Finance and Administration Co. Ltd. in relation to these matters.

We further write to advise that any attempt by your firm not to release our client's files without the firm of Gary Matthews solicitors providing an undertaking to Claim Finance and Administration Co. Ltd. will be referred to the Law Society of Ireland for their determination.

We look forward to receiving release of our client's files within a period of seven days from that date of this correspondence."

7. In a second letter, Gary Matthews solicitors referred to the undertaking given by Sweeney solicitors to Claim Finance and Administration Co. Ltd. This letter went on to say that the agreements between the plaintiff and Claim Finance and Administration Co. Ltd. contravened the torts of maintenance and champerty contrary to the Embracey Act (Ireland) 1634 as retained by the Statute Law Revision Act, 2007, and was also contrary to the National and European Consumer Credit Legislation Regulations and Directives and was therefore unenforceable. The letter also stated that the torts of maintenance and champerty remained a criminal act in this jurisdiction, and therefore the provision of an undertaking in support of the same is aiding and abetting a criminal act. The letter asserts therefore that the undertaking given on behalf of the plaintiff by Sweeney solicitors was illegal and void.

8. The same letter went on to say that in the event of Claim Finance attempting to recover monies advanced to the plaintiff, then he would join Sweeney solicitors to any such action as the undertaking given by Sweeney solicitors was provided negligently and recklessly in aiding and abetting a criminal act. This letter concluded by again requesting delivery of the files and stating that if they were not delivered promptly, the matter would be brought to the attention of the Law Society, the Central Bank of Ireland, An Garda Síochána and all other regulatory authorities.

9. The third letter of 30th August, 2016 from Gary Matthews solicitors dealt with the issue of fees claimed by Sweeney solicitors. There is nothing especially controversial about this letter; it states that the plaintiff wishes to exercise his right to have the professional fees of Sweeney solicitors taxed by the taxing master, and in relation to items of outlay, accepts some items and objects to others.

10. Unsurprisingly, this correspondence provoked a sharp response from Sweeney solicitors, most especially in relation to allegations of champerty and maintenance. These allegations were rejected out of hand. Sweeney solicitors requested the withdrawal of the allegations. They also stated that they were claiming a lien on the plaintiff's files until such time as undertakings given on his behalf to Claim Finance were taken over by Gary Matthews solicitors, and Sweeney solicitors released from the same. They also made proposals in relation to treatment of costs.

11. This in turn generated a reply of 6th September, 2016 from Sweeney solicitors. This letter stated that at the time of writing their first letter to Sweeney solicitors they did not have a copy of the funding agreements with Claim Finance available, but having obtained a sample copy of such agreements, they repeated the allegations previously made as to the legality and validity of the agreements. They again threatened to refer the matter to the Law Society. On this date they also sent an amended form of authority from the plaintiff omitting the reference to the Claim Finance undertaking appearing in the form of authority previously completed by the plaintiff, i.e. omitting the authority given by the plaintiff to Gary Matthews solicitors to release Sweeney solicitors from their undertaking to Claim Finance, and instructing Gary Matthews solicitors to give an alternative undertaking to Claim Finance. (Of course there could never have been any question of the plaintiff himself releasing Sweeney solicitors from his undertaking to Claim Finance, but by amending the undertaking in this way, the plaintiff was making it clear that, as far as he was concerned, Sweeney solicitors could remain liable on foot of their undertaking, and he would not be accepting any responsibility in connection with the same). There followed some further correspondence, but ultimately, the plaintiff caused the within motion to issue on 12th October, 2016.

12. Before continuing further, it should be noted that Sweeney solicitors had in fact given five undertakings on behalf of the plaintiffs. Four of these were given to Claim Finance and the fifth was given to Fynske Bank, which is a Danish bank. While the court was not given any details of the latter undertaking, it presumably arose in respect of a liability that the plaintiffs had in Denmark since they were at all material times resident in that country. In any case this undertaking was expressly released by Fynske Bank on 3rd May, 2017 and was not the subject of the complaints made by Gary Matthews solicitors.

13. In relation to the other four undertakings however, these were given at different times in relation to different loans advanced by Claim Finance. It appears that while it was intended that any liability arising on foot of these undertakings would be discharged from the proceeds of the claims of Mr. Sullivan and Ms. Abrams, one of the undertakings related to a medical negligence claim brought on behalf of Ms. Abrams son, a minor. Gary Matthews solicitors drew this to the attention of Sweeney solicitors and correctly pointed out that such an undertaking could not be given in respect of funds advanced to Ms. Abrams and Mr. Sullivan. Sweeney solicitors agreed and immediately took steps to secure the release of this undertaking, and Claim Finance agreed without difficulty to release Sweeney solicitors from this undertaking, and the release was furnished on 13th March, 2017.

14. Following a number of adjournments, the motion was heard before me on 4th April, 2017. Having heard the parties, I made it clear that I would not be making any order which would require a solicitor to deliver files to another solicitor, while at the same time remaining liable in respect of undertakings given on behalf of the clients to a financial institution; Sweeney solicitors were entitled to be released from these undertakings before they could be obliged to transfer the files.

15. On that basis I could have simply struck the motion out, but in an effort to bring about a resolution to the matter, I suggested that the parties might seek certain clarifications from Claim Finance, most especially that they would accept an undertaking from Gary Matthews solicitors to discharge the amounts due to Claim Finance, provided that the plaintiffs' claims were successful and that there were adequate funds to do so after deduction of all sums properly payable in respect of costs and outlay (to the extent not recovered from the defendant). While I made it clear that it was a matter for Gary Matthews solicitors to decide whether or not they wished to give any undertaking at all, it seemed to me that the matter could be resolved by them giving an undertaking that was confined to matters entirely within their control, and which were duly authorised by the plaintiffs.

16. After some further correspondence between the parties and Claim Finance and a number of adjournments, matters ultimately resolved; Claim Finance and Gary Matthews solicitors reached an agreement on the terms of an undertaking and the files were transferred. This decision therefore relates not to the reliefs sought in the motion, but to the costs incurred by the parties in respect of this motion. Gary Matthews solicitors submit that the court should make no order as to costs; Sweeney solicitors submit that not only should they obtain an order for all of the costs incurred by them in connection with this motion, but the court should further order that a "wasted costs" order should be made against Gary Matthews solicitors pursuant to O. 99, r. 7 of the Rules of the Superior Courts which states:-

"If in any case it shall appear to the court that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the court may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay any other person, and thereupon may make such order as the justice of the case may require."

17. In simple terms, it is submitted on behalf of Sweeney solicitors that this motion should never have issued because it had no

prospect of success. The court would never make an order against a firm of solicitors requiring it to deliver files to another firm of solicitors in circumstances where the first firm of solicitors had an outstanding undertaking to a third party, duly authorised by the client.

18. Counsel for Sweeney solicitors referred the court to a number of authorities including the decision of Cooke J. in *O.J. v. Refugee Applications Commissioner* [2010] 3 I.R. 637. In making an order under O. 99, r. 7 he stated at para. [22] that: O. 99, r. 7 was "a jurisdiction which should be exercised sparingly and only in clear cases where it is necessary to do so in order to do justice between the parties". In that particular case he found that the proceedings ought not to have been issued and could never have succeeded. He said that the case before him:-

"... ought not to be characterised as a case involving gross misconduct in the sense of professional misconduct as such. There has, however, been a clear default in the discharge of the duty owed by legal practitioners to the court in commencing and continuing the proceeding. No minimal consideration appears to have been given to the legal objective sought to be achieved by the proceeding ... this can clearly be seen to be a case in which costs have been incurred by the applicants to the respondent without reasonable cause and that, by reason of default on the part of a solicitor, costs have been incurred which proved fruitless to the applicants".

19. Reliance was also placed on the earlier case of *Kennedy v. Killeen Corrugated Products Ltd.* [2007] 2 I.R. 561 in which Finnegan P. stated at p. 568 that :-

"... I am satisfied power of the court to make an order under O. 99, r. 7 ... depends upon the solicitor being guilty of misconduct in the sense of a breach of his duty to the court or at least of gross negligence in relation to his duty to the court."

20. Counsel for Sweeney solicitors submitted that Gary Matthews solicitors have been guilty of misconduct or gross negligence by adopting an intransigent position and by issuing a motion which could never have succeeded; that no minimal consideration was given to the legal objective sought to be achieved and that costs have been incurred by the parties by reason of the default on the part of the solicitor, which costs have proved fruitless to the applicants.

21. Attention was drawn to the Guide to Professional Conduct for solicitors of the Law Society of Ireland which states at p. 60 that "no solicitor should cooperate with a client who seeks to leave a solicitor with an outstanding undertaking".

22. While the matter was ultimately resolved, it is submitted that the plaintiffs did not succeed with their application and that the motion would have been struck out on its hearing date but for the intervention of the court to assist the parties in resolving the dispute.

23. Insofar as the plaintiffs rely on issues of champerty and maintenance raised by them in the application, it is submitted that these are a matter for a defendant to raise in seeking damages after a champertous law suit. The legality or otherwise of the loan agreements is not an issue capable of resolution in a motion arising from a dispute about the transfer of files from one solicitor to another. It is also submitted that Gary Matthews solicitors had cited the loan agreements before issuing the motion and it is difficult to see what benefit accrued to any party by reason of the issue of the motion. As to the undertaking relating to the minor, it was raised by Mr. Matthews for the first time in his grounding affidavit, and it is clear that he had a copy of that undertaking before the issue of the motion. It was then dealt with promptly by Sweeney solicitors and could have been dealt with without the issue of a motion.

24. In relation to costs, it is submitted on behalf of Sweeney solicitors that there was no serious dispute about fees; that Gary Matthews solicitors were authorised to and provided an undertaking to discharge all reasonable fees incurred, subject to taxation and that the matter was, for all practical purposes, resolved on this basis.

25. In reply, it is argued on behalf of Gary Matthews solicitors that there was confusion in relation to costs incurred by the plaintiffs to Sweeney solicitors because of the existence of a policy providing insurance in respect of legal expenses. It was deposed by Mr. Sullivan that Sweeney solicitors were nominated by DAS Legal Expenses and Mr. Sullivan exhibited a letter from Sweeney solicitors dated 20th August, 2014 which stated that they had received instructions through the plaintiffs' legal expenses insurance company, namely DAS Legal Expenses. In a letter dated 18th August, 2014 to Mr. Sullivan, that company stated that:-

"DAS are your legal expenses insurer and, as discussed over the telephone, we have furnished your details to Mr. David Gaffney, Sweeney solicitors ... We have requested the said company to contact you in relation to your accident, to provide you with any advice and assistance you require, and they will be in touch shortly. You are quite entitled if court proceedings are necessary to use your own solicitor subject to the firm agreeing our terms and conditions of appointment ..."

26. It is submitted that for this reason there was confusion in relation to the plaintiffs' liability for costs and that the availability of this legal costs insurance cover contradicts an averment made by Mr. Sweeney that Sweeney solicitors were retained on a "no fee" basis.

27. Secondly, it is submitted that there was considerable confusion surrounding the purpose and extent of the funding agreements entered into between the plaintiffs and Claim Finance, to which the undertakings related. It is submitted that Mr. Sweeney was unable to clarify the issues raised and it required further research by Gary Matthews solicitors to determine the true nature of the agreements. Reliance is placed upon the administration pack of Claim Finance, which was only provided to Gary Matthews solicitors in May 2017 which states at p. 2:-

"We finance access to the legal, medical and other support services that you may need."

It goes on to state that:-

"Funding can be used for any purpose: legal costs, medical expenses and/or day to day living expenses."

The plaintiffs/Gary Matthews solicitors rely on the recent decision of the Supreme Court in *Persona Digital Telephony Limited & anor. v. Minister for Public Enterprise & ors* [2017] IESC 27 in which the Supreme Court affirmed the existence of the torts and crimes of maintenance and champerty. Denham CJ. at para. 51 referred to the following passage in the decision of Clarke J. in *Thema International Fund v HSBC Institutional Trust Services (Ireland)* [2011] 3 I.R. 654:-

"In Ireland it is unlawful for a party without an interest (or some other legitimate concern including charity) to fund the litigation of another at all and, in particular, it is unlawful to fund litigation in return for a share of the proceeds."

28. It is submitted that Mr. Matthews was not a party to the initial discussions with Claim Finance and nor was he privy to the manner in which monies were advanced or expended. The monies were paid directly to Sweeney solicitors. Furthermore, it is submitted that exorbitant and excessive charges and interest rates were applied to the facilities, suggesting a potential link between the funding and outcome of the proceedings.

29. It is further submitted that having regard to the serious obligations undertaken by solicitors when providing an undertaking, it was prudent for Gary Matthews solicitors to ventilate the above issues before the court prior to providing any undertaking in respect of the same.

30. Finally, it is submitted that the undertaking given on behalf of Ms. Abrams' son was at all times unenforceable, and Gary Matthews solicitors could not have provided an undertaking in relation to the same.

31. As regard the authorities in relation to the application of O. 99, r. 7, Gary Matthews solicitors relies upon the same authorities as Sweeney solicitors. Referring to the case of *Kennedy v. Killeen Corrugated Products Ltd*, counsel for Gary Matthews solicitors noted that Finnegan P. observed that in the past, courts have fixed solicitors with costs in a number of situations, including solicitors acting for either plaintiff or defendant in an action without authority, joining a plaintiff without his authority, acting for a non-existing plaintiff, acting for a defendant in an action with knowledge that no defence is possible, failure to deliver bills of cost, acting against a former client, instituting fraudulent proceedings, instituting a collusive action, instituting a frivolous and vexatious action, and unreasonably pleading fraud and undue influence. All of these it is submitted are clear examples of improper conduct during proceedings and that the evidence in this matter does not reach the threshold for even a *prima facie* entitlement to an order being made against Gary Matthews solicitors pursuant to O 99, 7.

32. Reliance is also placed upon the decision of the Court of Appeal in England and Wales in the case of *Myres v. Elman* [1940] A.C. 282 in which Maughan L.J. stated at p:-

"... the jurisdiction of the court to order a solicitor to pay the costs of proceedings is a punitive power resting on the personal misconduct of the solicitor and precisely similar to the power of striking a solicitor off the rolls or suspending him from practice. ... Apart from the statutory grounds, it is of course true that a solicitor may be struck off the rolls or suspended on the ground of professional misconduct, words which have been properly defined as conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency".

This passage was cited with approval by Finnegan P. in *Kennedy*.

33. Counsel for Gary Matthews solicitors also relied upon the decision of Hogan J. in *HO (infant). v. Minister for Justice Equality & Law Reform & anor* [2012] I.E.H.C. 231 in which he stated at para.21:-

"... the courts must be especially wary of retrospective endeavours to saddle solicitors with wasted costs orders simply because a case has been lost. Obvious cases such as misconduct, lack of *bona fides* and a vexatious desire to harass and oppress one's opponent by litigation aside, the jurisdiction to impose a wasted costs order must otherwise be confined to those cases where it is obvious that the litigation is so obviously pointless."

34. In conclusion, it is submitted on behalf of Gary Matthews solicitors that in all of the circumstances the continuation to hearing and the management by the court of the motion to a successful conclusion could not be construed as "misconduct, lack of *bona fides* and a vexatious desire to harass and oppress one's opponent by litigation" nor "obviously pointless".

Decision

35. Gary Matthews solicitors brought the applications because they were not satisfied to take over the undertakings of Sweeney solicitors to Claim Finance, and thereby procure the release of Sweeney solicitors from their undertakings. In the ordinary course of events, no solicitor can reasonably expect another solicitor to hand over files in respect of which he/she has given undertakings to a third party, with the authority of the client, and remains liable in respect of those undertakings. A solicitor who transfers his files in these circumstances may not only be acting in breach of his undertaking to the third party (depending on the terms of the undertaking) but he or she also exposes him/herself to personal liability in respect of any losses sustained by that third party as a consequence of placing matters outside his/her control by transferring the files. It is likely also that the solicitor may face charges of professional misconduct if he is unable to comply with the terms of the undertaking as a result of transferring the files. For very good reason therefore the Law Society of Ireland Guide to Good Professional Conduct states that no solicitor should cooperate with a client who seeks to leave a solicitor with an outstanding undertaking.

36. So why then did Gary Matthews solicitors decline to give the necessary undertaking to Claim Finance in order to procure the release of Sweeney solicitors from their undertakings? They did so because they had doubts about the legality of the finance provided and the undertakings relating thereto. If the finance constituted maintenance and champerty then the contract providing for it may be unenforceable, and the undertaking underpinning the contract might also be tainted with illegality. Since champerty and maintenance is also a criminal offence then they too might be implicated in the commission of an offence.

37. The Claim Finance agreement states at Clause 2.1 that:-

"The company has agreed to advance funding to the recipient for personal needs pending resolution of the claim".

Gary Matthews solicitors had access to a copy of this form of agreement before issuing a motion. At the conclusion of these proceedings I enquired as to how the funds advanced by Claim Finance were applied, and I was informed that they were paid in the first instance to Sweeney solicitors, and then passed onward to the plaintiffs. However, in an affidavit sworn on 20th January, 2017 in reply to the first affidavit of Mr. Sweeney, Mr. Sullivan states:-

"(a) The monies secured from Claim Finance and Administration Co. Ltd. (hereinafter "Claim Finance") did finance the outlay of the cases referred to by Mr. Sweeney.

(b) At all material times Mr. Sweeney knew that this deponent was indigent and was using the funds to pay for the various medical reports and assessments required and advised on by Mr. Sweeney.

(c) The effect of the extortionate rate of interest should have been adequately explained to this deponent and especially since it made time of the essence.

(d) Mr. Sweeney has delayed in the timely prosecution of my claim and has caused distress to this deponent.

38. The contents of this affidavit are therefore somewhat contradictory with the information furnished at the conclusion of this application to the effect that the plaintiffs received all of the proceeds of the advances of Claim Finance. But in any case it is reasonable to infer from this affidavit that this reflects the instructions given by the plaintiffs to Mr. Matthews when he received instructions from the plaintiffs (even though this affidavit is clearly sometime later, and after the date Mr. Matthews caused the motion to issue).

39. Additionally, following the issue of the motion, Mr. Matthews identified a specific concern in relation to the giving of an undertaking which had the capacity to impact upon the proceeds of an action taken on behalf of Mrs. Abrhams' son (a minor). Even though this issue was resolved thereafter quite readily by Sweeney solicitors through engagement with Claim Finance, nonetheless the existence of this issue certainly highlights the need for caution before Mr. Matthews could take over the undertakings.

40. In any case, it appears that what prompted Gary Matthews solicitors to issue the motion was their review of a standard form of the Claim Finance agreement which they considered might be in breach of the rule against maintenance and champerty. It seems likely that instructions from the plaintiffs in relation to the application of a small portion of the proceeds of the loans towards outlay may have elevated their concerns. The very name of the company, Claim Finance no doubt contributed to these concerns also.

41. It is arguable that the correct course for Mr. Matthews to take at this juncture would have been simply to explore the issue further with Sweeney solicitors, if necessary take advice from counsel, and if still considered necessary, refer the matter to the Law Society. Moreover they certainly should not have written to Sweeney solicitors about this aspect of the matter in the highly inflammatory terms that they did on 30th August, 2016. I would characterise that letter as bordering on the unprofessional and of a kind more likely to elicit a response in kind than to resolve problems. Correspondence between solicitors should be firm and assertive where necessary, but never intemperate, aggressive or inflammatory. Unfortunately Mr. Matthews letter of 30th August, 2016 had all of these characteristics.

42. But be that as it may, the most that can be said about Mr. Matthews concerns in relation to these undertakings is that they were misplaced or that he was wrong and if outlay was indeed paid to the plaintiffs, then it is far from certain that he was wrong. It could certainly not be said that he was guilty of misconduct in the sense of a breach of his duty to the court or of gross negligence in relation to his duty to the court.

43. Although, in his grounding affidavit, Mr. Matthews raised concerns about the plaintiffs' liability to costs to Sweeney solicitors, somewhat surprisingly in his affidavit he does not make any reference to the plaintiffs' legal expenses insurance cover provided by DAS. It may well be that the plaintiffs have an entitlement to a full indemnity from DAS Legal Expenses in relation to their costs, but that is not a matter with which this decision is concerned.

44. Having regard to the above, and having regard also to the fact that it is clear from the authorities that the jurisdiction of the courts to make an order under O. 99, r. 7 of the Rules of the Superior Court is one that should be sparingly exercised, and in the words of Cooke J. in *O.J.* "... in clear cases where it is necessary to do so in order to do justice between the parties". I am of the opinion that the court should not make an order against Gary Matthews solicitors under O 99, r 7 of the Rules of the Superior Courts.

45. I do consider however that the court should make an order for the costs of Sweeney solicitors as against the plaintiffs. It was the plaintiffs who decided to change solicitors. While the plaintiffs complained on affidavit in this application about the terms and conditions of the finance provided by Claim Finance (and very understandably so) it is clear that they signed an acknowledgment that they understood those terms and had been afforded the opportunity of obtaining independent legal advice in respect of same if they wished to do so. It is also clear that they obtained the benefit of the finance and that if there was any deduction from the same, it was a comparatively modest amount to deal with outlay associated with medical reports and the like.

46. Furthermore, while they stated on affidavit that the reason they were changing solicitors was owing to the lack of progress with their proceedings, it is apparent from the correspondence exhibited by Sweeney solicitors in reply that they were not responding to requests for instructions. Furthermore, no significant delays are apparent from this correspondence. Their claims appear to have processed through the Injuries Board and thereafter proceedings issued on their behalf reasonably promptly. While the plaintiffs have every right to change solicitors, they must accept the cost consequences of doing so, one of which is the costs associated with this motion issued on their behalf.

47. Finally, I must make some comment in relation to the administrative and interest charges being levied by Claim Finance. The plaintiff drew down four advances from Claim Finance, one for €20,000.00, three in the sum of €10,000.00 each and one in the sum of €3,000.00. I do not propose to recite the terms of each agreement, but taking the first advance in the sum of €20,000.00, the repayment schedule states as follows:-

Total amount advanced under this funding agreement: €20,000.00

Administration fee: €5,610.00

Case monitoring fee: €3,740.00

Application fee: 250.00

Total amount to be repaid under this agreement based on following repayment schedule:

If full payment is made within 12 months from the date of this

agreement: €29,600.00

If full repayment is made within 12-18 months from the date of this

agreement: €33,600.00

If full repayment is made within 18-24 months from the date of this

agreement: €37,600.00

At any time after 24 months from the date of this agreement an additional €8,000.00 per annum.

48. Charges of a similar kind are applied, proportionally, in relation to the sums of €10,000.00 and €3,000.00 subsequently advanced. Before Claim Finance would agree to release Sweeney solicitors from their undertaking, and accept the undertaking of Gary Matthews solicitors, the plaintiffs were required by Claim Finance to sign an acknowledgement of the amount then owing by them to Claim Finance as of 14th June, 2017. The balance due was stated to be €92,240.00 in respect of total funding provided in the amount of €43,000.00, the first advance of funding having been made on 28th June, 2015.

49. It may well be that Claim Finance take a degree of risk in advancing funds repayment of which is contingent upon the successful outcome to litigation. It is unclear however the extent of the risk which they undertook specifically in these matters and I note that in one of the cases involved it appears to be an assessment only. The plaintiffs did sign acknowledgements stating that they knew the terms upon which the finance was being advanced and in fairness to Claim Finance these terms were very clear and transparent. But the funds are being provided at an exorbitant cost. In making the various directions that I did in these proceedings with a view to resolving the dispute that arose between the parties, it was not my intention that the plaintiffs would be required to sign an acknowledgement of the amount then due to Claim Finance in order to secure the transfer of their files. They would be entitled to have their files transferred provided that Claim Finance received a corresponding undertaking from Gary Matthews solicitors, to that provided by Sweeney solicitors.

50. I am setting all of this out in this decision in order to make it clear that nothing that occurred on this application was intended to prevent the plaintiffs from pursuing any legitimate grievance that they may have in relation to the provision of finance to them by Claim Finance; equally, nothing I am saying here is intended to suggest that they have a grievance in respect of which they have any legal redress.