

## THE HIGH COURT

2010 41 SA

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

## BETWEEN

EUGENE O'BRIEN

APPELLANT

-AND-

C.F. O'CONNELL

RESPONDENT

## JUDGMENT of Kearns P. dated the 19th day of July 2010

This is an appeal brought by Mr. O'Brien from a decision of the Solicitor's Disciplinary Tribunal ("the Tribunal") dated 15th April, 2010 in which a finding was reached that there was no prima facie case of misconduct on the part of Mr. C.F. O'Connell of 55 Grand Parade, Cork City, County Cork ("the solicitor").

The history of the complaints made by the appellant began when the solicitor was introduced to the appellant by the appellant's brother, Mr. Frank O'Brien, on 15th May, 1998 in circumstances where the appellant wished to realise his share in the family holding arising out of the death of his brother, who had died intestate on 1st May 1992. There was also an issue regarding the appellant's mother's estate which required some advice. The solicitor was duly engaged to provide legal advice to the appellant concerning his entitlements in light of these matters.

The genesis of the complaints made by the appellant against this solicitor to the Solicitor's Disciplinary Tribunal underwent a number of transformations. The initial complaint advanced by the appellant involved an allegation that he had not received payment of the sum of IR£10,000 (€12,697.38) from his brother, a Mr. Frank O'Brien, in relation to the relevant property transaction which had taken place in 1998.

The solicitor, however, at all times maintained that the appellant did receive the money that was due to him and that this payment was made to him by cheque dated 1st December, 1999 drawn by his brother, Frank O'Brien, and lodged to the applicant's account at AIB Bank, The Square, Blarney, Co. Cork on 2nd December, 1999. The solicitor referred to a letter from AIB Bank, Blarney, Co. Cork dated 25th November 2009 which evidences this payment and to a copy of the cheque dated 1st December 1999 drawn by Frank O'Brien in favour of the appellant.

It may be the case that the appellant withdrew his assertion that he had not received the payment of the IR£10,000 because of this evidence. He also withdrew a further assertion that had been made by him to the effect that the solicitor had introduced himself to the appellant in improper and inappropriate circumstances.

Having withdrawn those complaints, the appellant then proceeded to advance a new ground of complaint, claiming that the solicitor had acted for both vendor and purchaser in the property transaction. The appellant further claimed that the respondent solicitor acted for both parties in circumstances where the property was sold for a consideration which did not reflect its true market value. The solicitor refuted this allegation and stated on affidavit that the purchaser, Mr. Frank O'Brien, had been represented at all material times by Joseph Morrissey & Co. Solicitors, of 17A South Mall, Cork, who were long standing family solicitors to the O'Brien family. The solicitor says on affidavit, in response to the issue of the appellant's dissatisfaction with the agreement reached with his brothers regarding the sale by him of his share in the land, that he was not consulted about the negotiation of the price of the appellant's share and that that negotiation had taken place between the appellant, his uncle, his brothers and their accountant, with the solicitor merely being instructed to implement the deal afterwards. The solicitor further averred that he had, in the course of a consultation with the appellant on 29th June 1998, advised him to have a valuation carried out of the farm so as to ascertain the market value of his share.

Throughout these proceedings, the appellant has been closely associated with and aided by a Mr. Patrick Reen who is well known to the Solicitor's Disciplinary Tribunal and to the courts as a lay litigant who has been involved in numerous proceedings and professional complaints against solicitors and barristers. The solicitor is of the view that the appellant's complaints against him are an abusive concoction of untruths and that the complaint was made with a view to putting him to the trouble of answering it. Indeed, the appellant's affidavit before this Court contains many sweeping allegations. One example of the type of allegations made is that he respondent solicitor is "guilty of misconduct in that he appears to have poor knowledge of legal matters and an extremely low eye q (sic)". At a later stage in the appellant's affidavit, it is stated that the solicitor "continued to implement his late uncle's malpractice who had affidavit's witnesses by the late Timothy McCarthy purporting to be a Commissioner for Oaths and this made C.F. O'Connell a concurrent wrongdoer". In support of this averment, the appellant exhibits a number of documents, among which is a letter from the Courts Service dated 11th July, 2006 which states that they did not have a record of a Timothy McCarthy having been appointed as a Commissioner for Oaths for the Cork Region. He further exhibits an extract from the Law Directory for 1994. The significance of this, presumably, is the absence of the name "Timothy McCarthy" from the section setting out the names of solicitors listed in the Directory as practising in the Cork area at that time. Finally, the appellant exhibited a further letter from the Courts Service dated 1st February 2008 which sets out a number of solicitors bearing the name Timothy McCarthy who are or were Commissioners for Oaths. There is no mention of any Timothy McCarthy having ever been appointed as a Commissioner for Oaths in the Cork area.

The appellant also sets out a number of grievances he has in relation to his late mother's estate and at paragraph 4 of his affidavit, the appellant claims that a Mr. Patrick Healy became a universal legatee "by means of a fraudulent conversion". Finally, the appellant exhibits a number of documents which he seems to imply are of relevance to the issue of when Donal Brendan O'Connell of Joseph Morrissey & Co. Solicitors actually ceased practice. Two of these documents suggest Mr. Donal Brendan O'Connell ceased practice in

2002. Yet the appellant points to a copy of cheques issued by Joseph Morrissey & Co. Solicitors in October of 2003 and which were signed by Donal Brendan O'Connell, which the appellant claims show that he was still in practice in that year. In the concluding paragraph in his affidavit, the appellant exhibits a newspaper article entitled "Solicitor Denies Defamation Claim" but declines to make any averment about how this article is relevant to his present complaint or appeal.

## **CONCLUSION**

The Solicitors Disciplinary Tribunal was of the view in this case that there was no bona fide grounds for an enquiry into the appellant's complaints. I agree with that view. It is difficult to accept that the appellant could have forgotten that he received the payment of the IR£10,000 which he claimed he had not received and then subsequently remembered that he had received the payment and abandoned that part of his complaint. It is equally unclear as to how the solicitor could be said to have engaged in misconduct in terms of acting for both the vendor and purchaser when it is clear that another firm of solicitors acted for the appellant's brother at all material times. There is no evidence to suggest that the solicitor had any involvement in the negotiation of the price the appellant was to obtain for his share in the property in question. His role, as per his instructions, was to implement the agreement which he duly did, the appellant receiving the payment thereby provided for.

For these reasons, I dismiss the appeal and affirm the findings of the Disciplinary Tribunal.