

**SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF MS. JOAN O'NEILL
A SOLICITOR OF THE LAW SOCIETY OF
IRELAND,
BLACKHALL PLACE, DUBLIN 7
AND IN THE MATTER OF AN APPEAL BY
T.C. GERARD O'MAHONY FROM A RULING OF THE SOLICITORS DISCIPLINARY TRIBUNAL
AND IN THE MATTER OF THE SOLICITORS ACTS
1954 TO 2002**

BETWEEN

T.C. GERARD O'MAHONY

APPLICANT/APELLANT

AND
JOAN O'NEILL

RESPONDENT

Judgment of Johnson P. delivered on the 26th day of October, 2007

1. This is an appeal from a ruling of the Disciplinary Tribunal of the Law Society in respect of complaints and allegations made by the appellant/applicant herein T.C. Gerard O'Mahony regarding the conduct of the respondent Ms. Joan O'Neill, Solicitor.

2. The allegations were that as a result of a number of alleged incidents between the applicant and the Law Society that the respondent had been guilty of misconduct. After a full hearing in front of the Tribunal, and after considering the affidavits lodged therein and the submissions made; the Tribunal in their Ruling to which I will refer, dismissed the application of Mr. O'Mahony and confirmed that there was no *prima facie* case of misconduct on the part of the respondent for inquiry in respect of each and every one of the allegations set out therein.

3. Over a period of two days I have (a) considered the papers in this matter (b) read the affidavits of Mr. O'Mahony, Ms. O'Neill and Mr. Brendan Cook of Cyril O'Neill & Company, Cost Drawers and (c) I have had the benefit of the evidence and submissions of Mr. O'Mahony and the evidence of Ms. O'Neill together with the submissions of counsel on behalf of Ms. O'Neill. As a result of my deliberations I find that I would not change a single word of the findings of the Disciplinary Tribunal. It is quite clear to me that Mr. O'Mahony considers he is in some way being hard done by however, in my view Ms. O'Neill has had nothing whatsoever to do with any matter about which Mr. O'Mahony feels a grievance. Further in my view on the evidence before me there does not appear to be any reason why Mr. O'Mahony should feel a grievance. Ms. O'Neill in the witness box gave clear cogent and decisive evidence regarding every aspect of her participation in this business. Whereas subjected to a long a repetitive cross-examination she demonstrated in the face of it fortitude, serenity and truthfulness. In my view Ms. O'Neill is the person who in this case is entitled to feel hard done by because of the entirely unfounded allegations made against her by Mr. O'Mahony. I endorse and repeat the full findings of the Tribunal which I will repeat hereunder with the only variation being that in addition to the affidavit and the papers already lodged I also rely on the evidence which was heard by me in the course of the case. The allegations are set out as follows:

(a) That a bill of cost, was prepared by Cyril O'Neill and Company, Cost Drawers, on 9th November, 1999 on the instructions of the respondent solicitor and was taxed by Taxing Master Moran on the 2nd February, 2000 in the applicant's absence and without his knowledge or authorised representation in the sum of £10,174.48;

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case. Further the respondent solicitor was acting on her client's instructions and did so in a manner which would not constitute misconduct.

(b) That the respondent solicitor misrepresented that the applicant was present at said taxation by implication that he consented thereto which was untrue and thereby procured a Certificate of Taxation dated 8th March, 2000 from Master J. Flynn certifying the applicant attended on him at that date (and hence approved of the certificate) which was not the case as the applicant was then in hospital recovering from triple bi-pass surgery and was completely unaware of the proceedings and without authorised representation thereat;

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case. Further the respondent solicitor was acting on her clients instructions and did so in a manner which would not constitute misconduct.

(c) The applicant says that the respondent solicitor was advised by him of said wrongful matters by letter dated 3rd April 2000.

Reason: This allegation does not disclose conduct which could be construed as misconduct.

(d) The applicant says that notwithstanding the forgoing the respondent solicitor proceeded to register the defective judgment in Stubbs Gazette and subsequently as a Judgment Mortgage against the applicant's residence.

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case. Further the respondent solicitor was acting on her client's instruction and did so in a manner which would not constitute misconduct.

(e) The respondent solicitor as an in-house solicitor was not entitled to charge costs on a full solicitor and client basis but on the basis of indemnifying the Society against its expense in the matter in accordance with the principle laid down by President Finlay in *Bank of Ireland - v - Lyons* (1981) IR page 295 at 304. See also Flynn & Halpin on "Taxation of Costs" page 466. See also Attorneys and Solicitors Act 1870 section 5 (the Society) "shall not be entitled to recover . . . any costs than the amount payable by the client (the Society) to his own Attorney or Solicitor".

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case. Further this allegation, even if proven, does not disclose conduct which could be construed as misconduct on the part of the respondent solicitor.

(f) That the respondent solicitor has refused to furnish the applicant with the information to which he is entitled by virtue of his right thereto by virtue of the legal authority set out in paragraph 8 above.

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case.

(g) The respondent solicitor has refused to furnish the applicant with:-

(i) the date of payment of said costs set out in the said Certificate of Taxation and

(ii) the amount thereof by reference to the date of registering said defective Judgment in Stubbs Gazette and subsequent registering as a Judgment Mortgage.

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case.

(h) That the respondent solicitor was aware at all relevant times of ill will or male fides experienced by him in dealing with the Society since 1998 in his endeavouring to bring same to the attention of the Society fundamental financial matters detrimentally effecting the prudent economic running of the Society;

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case.

(i) That the respondent solicitor used her position to take unfair advantage of the applicant either on her own behalf or on behalf of others and same was contrary to her duty as an officer of the court.

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein.

(j) That the respondent solicitor did not observe the good faith and frankness expected by a member of the solicitors' profession and that furthermore she did not observe the good manners and courtesy expected of such a member towards another member of the profession.

Reason: This allegation has been answered comprehensively by the respondent solicitor in her replying affidavit sworn the 18th July, 2006 and the documents exhibited therein and the evidence heard in the case.

4. As a result of the matters above mentioned I am satisfied that at all times Ms. O'Neill behaved in this matter honourably, honestly and efficiently in the highest traditions of the solicitors profession.

5. As stated having accepted these findings without qualification and having added my own views on the matter thereby dismiss the appeal of Mr. O'Mahony.