

THE HIGH COURT

[2014 No.1 SA]

IN THE MATTER OF THE SOLICITORS ACTS 1954 - 2002

BETWEEN

PATRICK C. KEARNEY

APPELLANT

AND

PHILIP B. WHITE AND RAY LANNON

SOLICITORS/RESPONDENTS

JUDGMENT OF Kearns P. delivered on the 24th day of March, 2014

This is an appeal by Patrick C. Kearney, Ballybrack, Merville, Co. Donegal ("the appellant") against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") dated the 5th of December 2013, that there is no *prima facie* case of misconduct on the part of Philip White and Ray Lannon of Michael D. White & Co., Carndonagh, Co. Donegal ("the respondent solicitor").

In the application to the Tribunal for an inquiry into the conduct of the respondent solicitors, the appellant made a complaint about the respondent solicitors' conduct in connection with the transfer of land and subsequent dealing with other clients in relation to the same parcel of land in Folio number DL47151F. The allegations made by the appellant against the respondent solicitors was rejected by the Tribunal as having been adequately rebutted by the respondent solicitors. It was held that they had not failed to disclose conduct which could be construed as misconduct and the Tribunal found that there was no evidence to support the allegation made.

Background

The appellant in these proceedings had prior dealings with the respondent solicitors in August, 2000 when they were retained to transfer land from the appellant's uncle to him. The transaction was completed in January, 2001.

In April, 2011 the respondent solicitors were engaged by Mr. John Kelly to act on his behalf in relation to a dispute regarding the lands in Folio number DL47151F. The respondent solicitors have also communicated with the appellant in relation to the same lands in July 2010 on behalf of neighbours of the accused.

The Tribunal decision dated the 5th December, 2013, held that there is no *prima facie* case of misconduct on the part of the respondent solicitors. By notice of motion returned on the 3rd February, 2014 the appellant appealed the Tribunal decision.

Affidavit of Patrick C. Kearney

By affidavit of the appellant sworn on the 24th June, 2013, he states that he is personally conducting this appeal. He claims that the respondent solicitors have a conflict of interest in relation to their dealings relating to lands in Folio number DL47151F. He claims that the fact that they are now representing another party in relation to the same lands and have been in correspondence with him and having acted for him previously they have a conflict of interest.

Replying Affidavit of Ray Lannon

A replying affidavit was sworn by the respondent solicitor on the 1st August, 2013, where he avers that he received instructions from a Mr. Kelly in relation to a land dispute with the appellant. By letter dated the 11th April, 2012, he wrote to the appellant in relation to this dispute. Further proceedings ensued.

When the respondent firm Michael D. White & Co. Solicitors acted on behalf of the appellant in the transfer of lands in 2001 the respondent solicitor was not employed in the firm. There is no conflict of interest as the matters are wholly unrelated.

Replying Affidavit of Philip White

A replying affidavit was sworn by the respondent solicitor on the 1st August, 2013, whereby he avers that the appellant is no longer a client of the firm Michael D. White & Co. and does not believe any conflict of interest arises in the firm acting on behalf of Mr. Kelly in connection with a right of way dispute.

He confirms that the firm did deal with a transaction involving the voluntary transfer of the above-mentioned lands by the appellant's uncle to him and his wife. This was over twelve years ago and has no connection to the present matter in relation to the aforementioned lands.

Second Affidavit of Patrick C. Kearney

By further affidavit of the appellant sworn on the 29th August, 2013, further assertions of conflict of interest are alleged by the appellant in relation to the same matters raised in his grounding affidavit. He claims that both himself and his uncle were represented by the respondent solicitors' firm. He claims that this was in respect of the aforementioned land transfer and subsequent dealings with the same parcel of land. He refers to letters from the respondent solicitors referencing the aforementioned piece of land. Many matters addressed by the applicant in his affidavit refer to issues the subject matter of legal proceedings which are not relevant to the claim in the present case.

The appellant raises issues of slander against the respondent solicitor in relation to the right of way the subject matter of legal proceedings.

He further asserts that the respondent solicitor was in possession of information that, as a result of representing him, may have prejudiced the matter before the court in relation to the right of way dispute with his neighbour.

Further Replying Affidavit of Ray Lannon

A further replying affidavit was sworn by the respondent solicitor on the 14th October, 2013, where he avers that there is no conflict of interest in the office of the respondent solicitor acting on behalf of another client in relation to court proceedings against the complainant. He denies that he is in possession of any information which would prejudice the appellant's case in any way.

He further rejects the averments that he was dishonest or has abused the relationship of trust with the public as a member of the solicitor's profession. He rejects the allegations of bringing the profession into disrepute and claims that he has always acted in good faith on behalf of his clients.

Further Replying Affidavit of Philip White

A further replying affidavit was sworn by the respondent solicitor on the 14th October, 2013. He avers that it has never been denied that the appellant was at one time a client of the firm but that it is not alleged that he is currently a client of the firm. The alleged conflict of interest arises in connection with a transaction conducted between the appellant and another party. This is not as the Guide to Professional Conduct of Solicitors in Ireland sets out as a "conflict of interest". Such a transaction would have to have been conducted between the complainant and another party through the firm. He rejects and denies that he has intended to mislead or that he has brought the legal profession into disrepute.

Ruling

Regarding the appellant's contention that the respondent solicitor acted in breach of the solicitors Code of Conduct and had a conflict of interest, this claim cannot be upheld. The Code of Conduct in relation to Conflict of Interest states as follows:-

"Chapter 03

Conflict of Interest

3.1 General

A solicitor should not act where there is a conflict of interest.

3.2 Conflict of Interest Between two Clients

If a solicitor, acting with ordinary care, would give different advice to different clients about the same matter, there is a conflict of interest between the clients, and the solicitor should not act for both. The solicitor is also likely to have a conflict if either client could reasonably take exception to what the other client has asked the solicitor to do.

Acting in a conflict of interest situation may involve the solicitor in a breach of the duty of undivided loyalty owed to each client, a breach of the duty to make full disclosure to each client in a matter, or a breach of the duty of confidentiality owed to each client.

A solicitor owes a duty to a client to disclose all relevant information to him. This follows from the fact that the solicitor is the agent of the client, who is the principal. In practice, this means that a solicitor must be careful not to accept information that is to be kept confidential from the client.

Where there may be a conflict of interest, it is a matter for the judgment of the solicitor whether or not he should act, based on the professional duty owed by a solicitor to every client. It is not a matter for the judgment of the clients."

There is no evidence to substantiate the allegation that the respondent solicitor behaved in any way in conflict of interest. The appellant was represented in a completely different matter by the respondent solicitor over twelve years ago. The matter in which the respondent solicitor is now acting is not related to the action within which the appellant is a defendant over right of way to his land. There can be no viable claim of conflict of interest. The Court agrees with the findings of the Tribunal that there is no misconduct on the part of the respondent solicitor. I therefore dismiss the appeal.