

THE HIGH COURT

[2012 No: 669SP]

BETWEEN

NOEL KERR

PLAINTIFF

AND

O'REILLY SOLICITORS

DEFENDANT

JUDGMENT of Kearns P. delivered on the 18th day of February, 2013

By special summons returned on 10th December, 2012 Noel Kerr ('the plaintiff') claims the sum of €12,500 from O'Reilly Solicitors of Market Street, Cootehill, Co. Cavan ('the defendant'). This sum was ordered to be paid to the plaintiff by Mr. Justice Herbert on 13th December, 2006 in the matter of *Noel Kerr v. Molloy and Sherry (Lough Egish) Limited and Onalis Limited*. The defendant was acting on behalf of the plaintiff. The plaintiff also claims that he is looking for copies of file 2002 No. 2996 P, held by the defendant.

The plaintiff's special summons is grounded on an affidavit sworn by him and filed on 4th December, 2012. In the plaintiff's affidavit, he refers to the court order dated 13th December, 2006 in the matter of *Noel Kerr v. Molloy and Sherry (Lough Egish) Limited and Onalis Limited* and avers that he has not received any of the monies ordered to date.

In paragraph 2 of the plaintiff's affidavit, he refers to a letter to him from the Law Society dated 20th February, 2012 in which the Society advises him to seek the assistance of the Court. The plaintiff also states that he has previously requested copies of the file and was told costs would have to be discharged in advance. The plaintiff also refers to a letter dated 30th July, 2009 from the defendant to Lennon Heather Solicitors thanking them for a cheque in the sum of €10,357.03, however, this letter does not appear to be on the file.

On 13th December, 2006 Mr. Justice Herbert ordered that the plaintiff recover the sum of €12,5000 together with costs and expenses against the first named defendant in the matter of *Noel Kerr v. Molloy and Sherry (Lough Egish) Limited and Onalis Limited*. The matter had come for judgement on 16th November, 2006 and the Court found the first named defendant was guilty of negligence and breach of statutory duty. O'Reilly solicitors were acting for the plaintiff and Lennon Heather and Company Solicitors were acting for the defendant.

A replying affidavit in these proceedings was filed by the defendant, Brendan O'Reilly, on 18th January, 2013 in which Mr. O'Reilly avers that the plaintiff's claim that there is money owing to him is misconceived. In relation to the matter of *Noel Kerr v. Molloy and Sherry (Lough Egish) Limited and Onalis Limited* Mr. Reilly avers that the plaintiff secured against the first named defendant a judgment for damages in the amount of €12,500 together with costs to be taxed by the Taxing Master of the High Court. On foot of instructions from Mr. Kerr, O'Reilly solicitors engaged a legal costs accountant to attend to the taxation of the party and party costs. The result was that the Circuit Court costs were awarded to the plaintiff in the sum of €14,943. The other party had previously been awarded motion costs against the plaintiff in the amount of €4,559 which were set off by the Taxing Master resulting in the balance payable to the plaintiff in the amount of €10,375. The other party paid the sum due for taxed party and party costs and it was applied towards the charges incurred for work undertaken on behalf of the plaintiff (counsel and an engineer were engaged on behalf of the client) in the amount of €41,559 leaving a balance due by the plaintiff to the defendant of €31,202 which he declined to pay.

Mr O'Reilly avers that the other party in the above matter has declined to pay the damages sum of €12,500 and claims entitlement to set off against the plaintiff's award the additional costs incurred by the other party in defending a Circuit Court claim in the High Court. He refers to correspondence between Mr. Kerr and the solicitors for the other party dated 23rd June, 2009, 30th July, 2009, 31st August, 2009 and the 9th October, 2009, however, these letters do not appear to be on the file. He avers that the plaintiff is aware of the attitude and stance adopted by the other party following advice received from the defendant herein, from the Law Society and from other solicitors consulted by the plaintiff. Again he refers to letters which do not appear to be on the file. He claims that the plaintiff has failed to reimburse stamp duties and expenses incurred by the defendant on his behalf in connection with the taxation of the party and party taxation. The plaintiff also declined to provide further instruction or to pay monies required to pursue enforcement against the other party for payment of the damages of €12,500. He says that this contributed to the defendant's decision to disengage with O'Reilly Solicitors.

The plaintiff has not made out a sufficient case or provided sufficient supporting documentation to justify the Court ordering the defendant to provide a copy of the file requested. In the normal course of events, solicitors are entitled to exercise a lien over a client's file until all fees outstanding are discharged and in this case insufficient detail is provided in this regard to allow the Court make a finding or draw any conclusion one way or another.

Having carefully considered all of the papers in this matter, I am not satisfied that the plaintiff has discharged the burden of proof on him or made out a sufficient case as to why the claim sought should be granted. The background has been satisfactorily clarified by the respondent in his comprehensive affidavit sworn on 17th January, 2013 and it is clear from this affidavit that the sum of €12,500 is not owed by the defendant. The plaintiff's claim must therefore fail with no order as to costs.