Neutral Citation Number: [2013] IEHC 292

The High Court

Record No 2011/6056P

Between

Denis Doyle

Plaintiff

And

Joe Buckley (Practicing under the Style and Title of J Buckley and Company Solicitors)

Defendant

Judgment of Mr. Justice Charleton delivered on the 25th of March, 2013.

For over ten years the defendant was the plaintiff's solicitor. They have now fallen out in a bitter dispute about fees. As to what may be due, very little is agreed between them. The plaintiff points to payments he made to the defendant between 1998 and 2011 amounting to €900,000 and claims that this is obvious overcharging. Further, he says that he did not really pay these fees but, rather, that they were deducted without his consent. The defendant replies that all fees were agreed and that whereas some fees for conveyancing transactions may have exceeded the professionally recommended level of percentage charge, these were specifically sanctioned by the plaintiff as client. At this stage, I have no view on any of this.

The plaintiff seeks an order for taxation pursuant to s.2 of the Attorneys and Solicitors (Ireland) Act 1849, as amended by the Legal Practitioners (Ireland) Act 1876, or alternatively an order under the inherent jurisdiction of the High Court referring the defendant's bills of costs to the Taxing Master.

Background

Among the problems that this application poses are that many of the disputed bills of costs are old. In respect of some, the charges are said to be supported by a detailed bill and in a number of these the plaintiff, as client, appears to have not only paid but signed off on the transaction.

The immediate background to these proceedings is that in November 2010 the plaintiff appointed a firm of cost accountants to investigate the bills he had paid to the defendant as his solicitor. Whatever dialogue followed was unsatisfactory to the plaintiff. The plenary summons which initiated this action was issued on the 5th July, 2011 and was followed by a statement of claim that was delivered on the 19th August, 2011.

That statement of claim describes the alleged problem that led to this litigation. One of the many transactions on which the defendant acted as solicitor for the plaintiff related to the sale of land to a company called Sandystream Developments Ltd. A deposit was needed for this sale and so in May 2006 the plaintiff paid over to the defendant a sum of €600,000 on the basis, it is claimed, that this would be held in the defendant's client account to the credit of the plaintiff. Proceedings were then issued against that company as purchaser. The deposit was forfeited by the purchaser and released to the credit of the defendant on behalf of the plaintiff. Because the purchaser company had been liquidated, agreed fees of €35,000 had then to be paid. The plaintiff claims that from January 2010, the defendant held the sum of €565,000 as monies on behalf of the plaintiff. In March 2010, the plaintiff claims that he asked for the release of these funds but was told by the defendant that the vast bulk of same had been used up in fees. Correspondence was exchanged. In the course of this, the plaintiff sought assurances that the money was still being held. According to the defendant, it was being held, but "against fees and expenses and interest properly due to this firm from Mr Doyle and his siblings." The defendant further claims to have been advised professionally that costs due to him amounted to €604,700. The matter came to court on interlocutory applications. Pursuant to an order of the High Court on the 18th July, 2011, the defendant was required to make certain disclosure as to what had happened to the money. This resulted in an affidavit from the defendant which indicated that of the deposit figure of €600,000, and such interest as it earned in the bank, a sum of €45,146.99 remained. Consequently, the plaintiff claims damages for breach of contract, fiduciary relationship, trust, misrepresentation and also seeks accounts and enquiries.

Taxation

In *State (Gallagher Shatter & Co.) v deValera* [1986] I.L.R.M. 3, the Supreme Court comprehensively discussed the power to refer a fee charged by a solicitor to taxation. Among the powers that might be invoked, and not called in aid in that case, was the jurisdiction of the courts to order taxation apart from statutory regulation. McCarthy J. stated:

> It is well established law that the court has always retained its inherent jurisdiction to order taxation; it derives from the court's inherent jurisdiction to supervise its officers, including solicitors, all of whom are officers of the court. A *fortiori*, such a jurisdiction requires that it be invoked; it has not, as yet, been invoked here. Such a jurisdiction runs in parallel to the statutory jurisdiction that I have sought to detail as derived from the Act of 1849; running in parallel does not mean that the court should lightly disregard the restrictions or limitations imposed by the statutory code.

In that case, the statutory code as to when taxation of costs was available was encapsulated in four principles:

> (1) The solicitor cannot lawfully sue for one month after delivery;
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> (2) The client has a period of twelve months within which to demand and obtain taxation;
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> (3) After the expiry of twelve months or after payment of the amount of the bill, then the court may, if the special circumstances of the case appear to require the same, refer the bill to taxation, provided the application to the court is made within twelve calendar months after payment;
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> (4) After the expiry of the latter period, there is no statutory power to refer for taxation.

Central to this dispute is the obligation of a solicitor to prepare a bill of costs. This document gives the client a good idea of what his solicitor is charging for. Following the form thus becomes important and the matter is subject to regulation. Order 99 r. 29 (5) of the Rules of the Superior Courts provides that bills of costs are to be prepared with seven separate columns:

> (a) the first or left hand column for dates;
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> (b) the second for the numbers of the items;
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> (c) the third for the particulars of the services charged for;
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> (d) the fourth for disbursements;
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> (e) the fifth for the Taxing Masters' deductions from disbursements;
>
> (f) the sixth for the professional charges;
>
> (g) the seventh for the Taxing Masters' deductions from professional charges.

In order for a bill of costs to be valid, there must be compliance with these exact strictures. Time does not begin to run until a valid bill is furnished by a solicitor to the client. The importance of a proper bill of costs is underlined by the decision of the Court of Appeal in England through the decision in *In re Osborn v Osborn* [1913] 3 K.B. 862. Particularly pertinent is the observation of Buckley L.J. at 868:

> A solicitor's bill against his client for costs in an action in which party and party costs are recoverable against the opposite party ought to contain the whole bill of the fees, charges, and disbursements in reference to the business to which it relates and not merely the bill of the extra costs chargeable as between solicitor and client. As long ago as 1825 it was held in *Drew v Clifford* 2 C.& P. 69 that it was not sufficient to include the party and party costs in a lump sum, but that the bill must be delivered with items, and in 1840 in *Waller v Lacy* 1 Man. and G. 54 that the bill ought to give a history of the cause so as to enable the officer to judge the propriety of the various items, and that the delivery of a bill containing merely the extra costs is not sufficient. The solicitor should deliver a bill of the whole costs, giving his client credit for the sum received for party and party costs. Accordingly, in *Cobbett v Wood* [1908] 2 K.B. 420 it was decided in this Court that a bill not containing the items allowed on taxation between party and party was not a sufficient bill within the Solicitors Act.

This statement was approved by Blayney J. in *Smyth v Montgomery* (Unreported, High Court, Blayney J., 7th July, 1986) where he ruled that no bill as contemplated by the Attorneys and Solicitors (Ireland) Act 1849 had been delivered. The statutory analysis in that case is equally applicable to this situation. The judge stated:

> In the light of the requirements of Order 99 rule 30 (5) of the Rules of the Superior Courts and of what Buckley, L.J. stated in his judgment in *In Re Osborn v Osborn*, I am of the opinion that the bill furnished here by the Defendant was not a bill as constituted a bona fide compliance with the 1849 Act and accordingly the provisions of Section 2 limiting the reference to taxation to twelve months from the delivery of the bill do not apply. Nor do the provisions of Section 6 apply as no bill as is envisaged by Section 2 has been paid by the plaintiff ... I consider that the right thing to do in this case is to exercise the jurisdiction conferred by this provision and accordingly I shall direct that the Defendant furnished to the Plaintiff a detailed Bill of Costs, such Bill of Costs to be on the lines indicated in the extract from the judgment of Buckley, L.J., to which I referred earlier, and to be delivered by the Defendant to the Plaintiff within two calendar months from the date of this judgment. On such Bill of Costs being delivered, it will then be open to the Plaintiff, if she so wishes, to have the bill referred to taxation. In that event, the taxation will take place in the normal way in accordance with the Rules of the Superior Courts.

On this application, not all of the documentation related to costs, such as bills of costs and the client's assent to and voluntary payment of same, running back ten years and more, has been exhibited. Rather, documents have been referred to piecemeal on each side depending on the point that was to be highlighted. It cannot therefore be now adjudicated if proper bills of costs were furnished by the solicitor and it also cannot be decided if there was an informed assent by the client to pay at the level charged. Without a detailed bill of costs in proper format, the second issue cannot arise.

Application
A summons to tax was issued, apparently in respect of the Sandystream matter, on the 28th June, 2011 and came for hearing before Taxing Master Flynn on the 15th and the 21st July of that year. Master Flynn directed that bills of costs should be prepared and filed within one month. This direction included bills in respect of other work for which payment was, depending on which side of this dispute is correct, either paid or taken some years before. The words "bring them all in" are ascribed to this distinguished official, who subsequently retired. The matter came before Taxing Master O'Neill on the 20th February, 2012. He, rightly, sought the guidance of the court.

For the Sandystream matter, three bills were apparently furnished by the defendant solicitor to the plaintiff as his client. Of these, one was settled. All of them are germane to the within proceedings. It is utterly pointless to have a plenary hearing on issues of breach of contract, and in what ever other legal dressing the cause is pleaded, when central to the issue as to whether money was wrongly taken by the defendant is how much he was entitled to charge. Even if it is proven that the defendant was entitled to charge the full sum or more than the sum of the deposit retained by him on behalf of the plaintiff together with interest earned thereon in the bank over that period, or, was not so entitled, a decision by the appropriate public official on what the proper fee was will remove at least one of the central uncertainties in this case. It is to be appreciated that on the statement of claim another issue might arise even if the defendant is vindicated in this respect and that is the manner in which the money was paid over or charged or taken, again depending upon the viewpoints of the parties. Given that the jurisdiction clearly exists, I am entitled to refer the Sandystream matter to taxation. There are two extra bills which have been given the administrative numbers D215 and D226. These bills are hereby referred to taxation.

Other charges going back to 1998 are also heavily contested. I could not propose to go that far back. Some of these may have been paid in error by the plaintiff but, on the other hand, they may also have been paid after a proper bill of costs, as described above, was furnished by the defendant solicitor to him as his client. Where a proper bill of costs has been furnished and where this has been paid by the plaintiff in a regular way, there is no warrant for exercising the inherent jurisdiction of the court to order taxation of costs at this stage. No official will know better than the Taxing Master as to whether a proper bill of costs supports any charge dating back

to the year 2000. By payments in a regular way, I mean that on receiving the bill of costs, the plaintiff himself disbursed the sum due by either paying over a cheque or through some form of bank transfer or by signing a letter or other document indicating that a particular sum of money for particular work referable in a reasonable way to such bill of costs should be paid or taken from monies to his credit in the solicitor's accounts. In the affidavit evidence exchanged between the parties, at increasing length and with the growing number of exhibits, a contest is entered as to what was or was not a proper bill of costs, and whether any bill apparently so furnished was one which complied with the statutory requirements. On one side, the plaintiff's, it is said that none of these are proper bills of costs and on the other it is said that they all are.

The Taxing Master must adjudicate on the issues as to costs from the year 2000 onwards and may have to decide:

(1) in respect of any matter whether a proper bill of costs was furnished or not; and

(2) whether evidence of voluntary payment by the plaintiff to the defendant as described above exists.

There is liberty to apply to the court on this motion by re-entry and simple brief affidavit on both sides should any intractable issue arise that is not capable of being dealt with in accordance with the principles set out herein.

Result
Bills D215 and D226 are referred to taxation. All of the charges made by the defendant of the plaintiff are to be proved before the Taxing Master. In respect of any matter where a proper bill of costs furnished by the defendant solicitor to the plaintiff as his client is proven, together with a voluntary payment of that bill by the plaintiff, taxation is to be rejected. In respect of any matter where a proper bill of costs is not furnished, or where voluntary payment by the plaintiff to his solicitor is not apparent, taxation in respect of that is hereby ordered.