

THE HIGH COURT

2010 37 SA

IN THE MATTER OF JOHN GERARD MURPHY A SOLICITOR OF JOHN A. SINNOTT & COMPANY SOLICITORS, FIRST NATIONAL HOUSE, MARKET SQUARE, ENNISCORTHY, COUNTY WEXFORD

AND

IN THE MATTER OF AN APPLICATION BY JAMES BREEN TO THE SOLICITORS DISCIPLINARY TRIBUNAL

AND

IN THE MATTER OF THE SOLICITORS ACTS 1954-2002

BETWEEN

JAMES BREEN

APPELLANT

AND

JOHN GERARD MURPHY

RESPONDENT

JUDGMENT of Kearns P. delivered on the 19th day of July 2010

This is an appeal brought by the appellant pursuant to s. 7 of the Solicitors (Amendment) Act 1960 (as substituted by s. 17 of the Solicitors (Amendment) Act 1994, and as amended by s. 9 of the Solicitors (Amendment) Act 2002), against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") of the 8th April, 2010. The Tribunal found that no prima facie case for inquiry into the conduct of the respondent solicitor had been established in respect of the complaints the appellant had made against the respondent to the Tribunal on the 9th February, 2010, and the 16th March, 2010.

FACTUAL BACKGROUND

The appellant made a complaint of misconduct to the Tribunal as against the respondent, a solicitor who had represented the Health Service Executive (the "HSE") in proceedings taken by the appellant for adverse possession as against the HSE. In those proceedings, the Circuit Court affirmed on the 18th December, 2007, that the HSE had proved its title to the property. The appellant, having lost his case, lodged an appeal to the High Court, which in turn dismissed all claims by the appellant.

The appellant's complaint against the respondent at the Tribunal was threefold and all three claims were dismissed. These proceedings only concern a complaint in relation to the alleged false registration of the HSE's title with the Land Registry. The appellant has contended throughout the proceedings that the respondent engaged in misconduct in applying for and gaining a false registration on the disputed land by sending a false affidavit to the Land Registry on the 18th April, 2005, which stated that the HSE was in undisputed possession of said property when the appellant was, at that time, in dispute with the HSE and had an interlocutory injunction in force which gave the appellant permission to use the land.

It was accepted by the respondent before the Tribunal that the application for registration of the freehold property was grounded on an incorrect averment in the affidavit of Mr. Thomas Byrne, dated the 18th April, 2005. The respondent contended that this was a simple error on his behalf as the Circuit Court proceedings were in being at the time the affidavit was sworn. He claimed that it was not in any way forged or falsified as the appellant alleged. Moreover, this acknowledgment of error was accepted by the judge in the Circuit Court proceedings and the judge in the High Court proceedings. Further, the respondent wrote to the Property Registration Authority on the 25th June, 2008, asking them to undo the registration as there was an error in the affidavit. On the 12th December, 2008, he again wrote to the Property Registration Authority, notifying them of the outcome of the proceedings before the High Court.

The Tribunal found that there had been no misconduct on the part of the respondent. It held as follows:-

"There was no evidence given to the Tribunal and at the hearing that the alleged false information was either reckless in its nature or intended specifically to deceive. The evidence that has been adduced by the parties both from the affidavits filed and the evidence given was that the issues underpinning the errors in this affidavit were discussed and considered in the two courts and there was no further or additional evidence given to the Tribunal."

It is this decision that the appellant appeals in these proceedings. In paragraph 3 of his affidavit, sworn on the 29th April, 2010, he sets out the basis for his appeal, which essentially rehashes what was already put forward before the Tribunal and the two courts. He advances as follows:-

"I wish to state that I do not agree with the findings of the Solicitors Disciplinary Tribunal and still allege that [the respondent] is guilty of misconduct... this Interlocutory Injunction was in force at the time that Solicitor John Gerard Murphy prepared all the documents for the land registry and the registry of deeds so for him to claim it was a simple mistake is untrue and misleading so by allowing the statement that his clients were in {undisputed possession} of the property to go into the land registry was deliberately deceitful and reckless conduct as this sworn affidavit was false in its nature and reckless in its structure..."

He further complains that the respondent was not obliged to take to the witness stand when he, the appellant, was asked to give

evidence on two occasions. This, he complains, contrasted with the unfair and disturbing cross-examination that he felt he was subjected to.

DECISION

As is apparent from the detailed narrative set out above, the appellant's case and allegation of misconduct has been fully investigated both in the Circuit Court and in the High Court. There is no question in either of those proceedings of the error contained in the affidavit sent to the Land Registry on the 18th April, 2005, being concealed or hidden in any way. In fact, the evidence was to the effect that the respondent wrote to the Property Registration Authority on the 25th June, 2008, asking that body to undo the registration as there was an error in the affidavit.

The appellant lost his claim in both the Circuit Court and the High Court.

His further complaint brought to the Tribunal was also, I am satisfied, fully investigated by that body.

The Tribunal was able to satisfy itself that nothing in the affidavit submitted on the 18th April, 2005, was submitted either recklessly or with specific intent to deceive. It is important in this context to bear in mind that errors can occur in the course of legal business and that such errors can occur without either negligence or fraud being involved. This strikes me as being one such case.

I have carefully read the affidavit of the appellant grounding this appeal and am satisfied that it has not turned up any fresh fact or new material which would in any way suggest that the finding of the Tribunal be disturbed or set aside.

For those various reasons, I would dismiss the appeal herein.