Neutral Citation: [2015] IEHC 727

THE HIGH COURT

FAMILY LAW

[2007 No. 73 M]

H.M.

TO DERMOT SIMMS SOLICITOR

IN THE MATTER OF THE JUDICIAL SEPERATION AND FAMILY LAW REFORM ACT 1989

AND IN THE MATTER OF THE FAMILY LAW ACT 1995 AS AMENDED BY THE FAMILY LAW (DIVORCE) ACT 1996

BETWEEN

H.M.

APPLICANT

AND

S.M.

RESPONDENT

AND

THE PTC LIMITED

NOTICE PARTY

JUDGMENT of Mr. Justice Noonan delivered the 20th day of November 2015.

Introduction

1. This matter comes before the court by way of application by the respondent pursuant to O. 99 r. 38 (3) of the Rules of the Superior Courts for a review of the taxation of the applicant's costs herein.

Background Facts

2. This matter arises out of family law proceedings brought by the applicant wife against the respondent husband. The applicant originally instructed Mr. Dermot Simms solicitor to represent her in judicial separation proceedings which commenced in 2007. At that time Mr. Simms was employed in the firm of Messrs. Rutherfords solicitors. He subsequently left Rutherfords in 2008 to set up his own practice and thereafter he continued to represent the applicant. The case came on for hearing before MacMenamin J. in December 2009 and it was heard over a period of eleven days between then and May 2010. Central to the proceedings was the question of asset division and by any standards, these were very substantial indeed and the arrangements surrounding them extremely complex.

3. MacMenamin J. delivered his judgment on the 29th of July 2010 and in the context of this application, it is only his determination in relation to costs that is relevant and in particular, two aspects of that determination. First, at para. 57 of the judgment, the court said:

> "Second, it is estimated that the applicant's legal costs by the conclusion of this case will be a multiple of the respondent's by a factor of four. The Supreme Court has commented on the level of costs in cases of this type. Very substantial sums of money are involved here as costs. Other than having received a broad outline from her solicitor at the outset of the proceedings, the applicant took no steps to ascertain her own potential financial exposure as to costs. She is not to be criticised for placing herself 'in the hands of her lawyers', but nowadays it might be expected that any client would seek some form of ongoing information as to the costs which primarily she would be incurring. In this context I do not think there was any real justification for the bringing of two interlocutory motions, one seeking to bar the husband from the family home. I do not think such a radical measure was warranted."

4. The second part of the judgment that is relevant is to be found at paragraph 84:

> "I turn finally to the question of costs. This is an ample resources case. As pointed out in W. v. W. in such cases a court may well be reluctant to award costs. The circumstances in this case differ, to some degree. There was late provision of financial information from the husband. This added to the length of the case by a factor of three or four days. The husband chose not to retain an accountant. This again would have shortened the case and reduced costs. I do not think these factors should be ignored – equally I do not think the husband should be placed in a position where he would be exposed to the entirety, or even a moiety of the wife's costs in an ample resources case. I will direct that the husband will pay 20 per cent of the estimated figure for the wife's costs as identified by counsel for the wife. This figure is confined to the costs of the hearing before me."

5. The formal order of the court was made on the 12th of November, 2010, and paras. 8 and 9 are material:

> "[8] An order directing the respondent to pay to the applicant the sum of €100,000 being 20 per cent of the estimated costs as provided to the court by counsel for the applicant, from which the respondent will be entitled to deduct the costs due by the applicant to him at para. 9 of this order.
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> [9] An order directing the applicant to discharge the respondent's costs of two interim motions such costs to taxed in default of agreement. The respondent shall be entitled to set off the costs payable by the applicant to him as set out at

para. 8 above."

6. The respondent's costs of the two motions in question were taxed in the sum of €18,894.07 leaving a sum of €81,105.93 due to the applicant. This sum has not been paid by the respondent.

7. Two further motions were subsequently brought by the applicant and respondent respectively which resulted in a further judgment of MacMenamin J. delivered on the 22nd of July, 2011. On the issue of costs, MacMenamin J. said (at page 4):

> "[7] I think there is force in what Mr. M.. says in relation to whether he has a genuine interest in the question of the applicant's legal costs. I do not intend to express any view, at this stage, as to the whether the letter which Mr. S. sent the applicant constitutes a "s. 68 letter" properly so called. It will be recollected that Mr. M. submitted that the letter was unspecific and did not identify any figures. I think it was legitimate for him to submit that the extent of the applicant's costs remains a legitimate concern for him in the event of the parties ultimately seeking a divorce. The extent of the costs incurred may impinge on the question of whether adequate provision has been made for the applicant and the (?). Thus, I am directing that the applicant's costs will be taxed, and that the respondent will be permitted to retain a cost drawer to make submissions to the Taxing Master in relation to the items of costs identified in the bill of costs which will be submitted by the applicant's solicitor (the problem of legal privilege has been raised). Clearly, the respondent will not be entitled to have access to any privileged documentation in the applicant's solicitor's legal files. But such situations are very common and are dealt with as a matter of routine by the Taxing Master. I will take Mr. M's. undertaking that he will pay for the cost of the taxation and not seek access to any privileged documentation. I will point out that such costs can be significant but I am sure he has taken advice on this question. Nonetheless, I think he has legitimate interest in seeking to ensure that the costs are minimised. The applicant will have to bear in mind the status of any s. 68 letter in the context of whether or not there is to be a solicitor/client aspect to her legal bills. I say this in light of the fact that the applicant's legal bill currently stands at something in excess of €570,000. This is a very large sum of money indeed. By now, the bill may be even greater. I recognise that the applicant feels that the respondent is a 'control freak' and this is yet a further aspect of his controlling nature. However, the truth of the matter is that he does have a legitimate financial interest in these questions." [sic]

8. The formal order of the court provided in that regard as follows:

> "[8] That the respondent do retain a costs drawer within one week of the date of perfection of the within order that such costs drawer identify himself/herself to the applicant's costs drawer within ten days of the date of perfection of the within order and that both costs drawers do apply to the Taxing Master for an early date for taxation.
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> [9] That the applicant's costs of the substantive hearing and preliminary motion be taxed and that the respondent's costs drawer will be permitted to make submissions to the Taxing Master in relation to the items of costs identified in the bill of costs which will be submitted by the applicant's solicitor.
>
> THE COURT DOTH NOTE
>
> The undertakings of the respondent…
>
> 2. That the respondent will pay the costs relating to the taxation of the applicant's costs and will not seek access to any privileged documentation…"

9. There then commenced in 2011 a very lengthy taxation process, which is still ongoing, in which the respondent seeks to challenge the applicant's solicitors bill of costs on a number of grounds. The Taxing Master delivered four written rulings on the 12th of December, 2011, the 16th of July, 2012, the 11th of October, 2012, and the 29th of May, 2014. The taxation was in effect "contested" between legal costs accountants retained on behalf of Mr. Simms and the respondent respectively.

10. The Taxing Master's first ruling was in relation to a preliminary issue which arose at the outset of the taxation and concerned two points. The first was whether the respondent should be entitled to challenge each and every item in the applicant's solicitor's bill in circumstances where the applicant herself approved those items or was the respondent confined to dealing with only the aspects of costs referred to in the judgment of the court of the 22nd of July, 2011.

11. The second point concerned the right of access of the respondent's legal costs accountant to the applicant's file and papers the subject matter of the bill of costs. The taxing master resolved the first issue in favour of the respondent, concluding that there was no restriction provided for in the court order limiting any submissions the respondent may wish to make in relation to the bill. Secondly the taxing master decided that the respondent's costs drawer should have access to all the papers other than privileged documentation. This ruling was given by Master Flynn who subsequently retired and the matter was taken over by Master O'Neill.

12. Following a further interim ruling on the 16th of July, 2012, the Taxing Master delivered his substantive ruling on the 11th of October, 2012. He noted at the outset that the respondent's costs drawer had accepted that the onus was on the respondent to show that the fees claimed were unreasonable. He dealt with a number of submissions made by the respondent's legal costs accountant. The respondent complained that no, or no proper, s. 68 letter had been written by Mr. Simms in circumstances where instructions had been given by the applicant in March, 2006, but the purported s. 68 letter was not written until 2nd of October, 2007, shortly prior to the institution of proceedings. The Taxing Master appears to have concluded that, although a more detailed letter might have been appropriate, the one that was in fact sent was adequate.

13. The respondent also submitted that the applicant's former solicitors, Rutherfords, wrote a letter on the 17th of June, 2008, indicating a proposed fee of €12,705 for the work performed up to the 6th of June, 2008, when Mr. Simms took over the file. The respondent submitted that having regard to this letter, Mr. Simms was estopped from claiming a higher level of fees. The Taxing Master ruled that no estoppel appeared to arise but it would appear that Rutherfords' letter was not at that point available to him. The respondent also argued that Mr. Simms had represented to the applicant that the totality of the costs she would incur in the proceedings would not exceed €200,000 and he was therefore limited to that amount. Here again, the Taxing Master felt that the evidence did not appear to establish any binding agreement in that regard.

14. The respondent further made objection to the applicant having to pay any costs in respect of the two interim motions which the court had held were unnecessary. However the Taxing Master ruled that as these motions had been brought after full consultation with the client and on her instructions, O. 99 r. 11 (3) made clear that such costs must be allowed. The Taxing Master then went on to conduct a detailed analysis of all the various items of costs in dispute and came to his final conclusions regarding the amounts to

be allowed to the applicant's solicitor.

15. Arising out of this ruling, both sides carried in objections to the ruling. These were the subject matter of further hearings and submissions where the respondent was represented by solicitor and counsel. Oral evidence was given by Mr. Simms and Mr. David Alexander, the managing partner of Rutherfords. Dealing first with the issue of the alleged estoppel arising out of the Rutherfords letter of the 17th of June, 2008, it would appear that this letter was made available to the Taxing Master at the objections hearing for the first time although he said that the evidence established that Mr. Simms never received a copy of that letter until subsequent to his previous ruling. However it would appear that the respondent in his submissions was no longer making the case merely that an estoppel arose but rather that the credibility of Mr. Simms evidence was now an issue such that it became a matter for the court to determine the basis of the entire claim for costs.

16. The Taxing Master referred in his ruling on the objections to the fact that at the hearing he had indicated that he did not consider himself to have the necessary jurisdiction to determine the estoppel issue and whether a letter written by Rutherfords, without the apparent knowledge or consent of Mr. Simms, could effect an estoppel on him. He felt however that this did not require him to abandon the entire taxation process as the issue raised was ultimately one for the court to determine and accordingly he proposed to disregard it. He also appears to have come to the conclusion that for similar reasons, he had no jurisdiction to determine the issue as to whether or not there was an agreement to limit the applicant's exposure to costs to €200,000 and it might ultimately be a matter for the court to determine if the respondent had the requisite locus standi to advance such argument. The Taxing Master concluded that he would disallow all the objections so that the previous ruling stood.

Legislative Background.
17. The jurisdiction of the High Court to review a decision of a Taxing Master is provided for in s. 27 (3) of the Courts and Court Officer's Act 1995 (paraphrased):

> "The High Court may review a decision of a Taxing Master of the High Court … made in the exercise of his or her powers under this section, to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master …has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master … is unjust.."

18. Order 99 rule 38 (3) of the Rules of the Superior Courts, insofar as material to these proceedings, provides:

> "Any party who is dissatisfied with the decision of the Taxing Master as to any items which have been objected to as aforesaid or with the amount thereof, may within twenty-one days from the date of the determination of the hearing of the objections or such other time as the Court or the Taxing Master may allow, apply to the court for an order to review the taxation as to the same items and the Court may thereupon make such order as may seem just…"

The procedural mechanism for a review of taxation by the court is provided for in O. 99 r. 38 (4):

> "The application to the Court shall be made by motion on notice to the other party concerned, such notice of motion to be filed in the Central Office and a copy thereof filed in the Office of the Taxing Masters and the motion shall be heard and determined by the Court upon the evidence which shall have been brought in before the Taxing Master, and no further evidence shall be received upon the hearing thereof, unless the Court shall otherwise direct."

Relevant Case Law
19. The functions of the Taxing Master provided for in s. 27 of the 1995 Act has been the subject of much judicial consideration. The section has been characterised as one which confers on the Taxing Master, who has special expertise in the area of legal costs assessment, all the attributes of a specialist tribunal – see *Superquinn Ltd v. Bray UDC (No. 2)* [2001] 1 I.R. 459. Section 27 (3) also brought about a significant change in the circumstances in which the court may intervene in relation to the findings of a Taxing Master. This was discussed by Kearns J. (as he then was) in Superquinn (at p. 475):

> "Under the old system, the court had a wide ranging remit and, in the context of a review under O.99, r.28, could 'make such order as may seem just'.
>
> Now under s. 27(3) of the Act of 1995 it can intervene 'provided only that the High Court is satisfied that the Taxing Master … has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master … is unjust'.
>
> This wording seems to represent a significant shift of emphasis and to impose a heavier burden on any party seeking to challenge a ruling of the Taxing Master. This interpretation is acknowledged at p. 350 of the *Minister for Finance v. Goodman (No. 2)* [1999] 3 I.R. 333 and can scarcely be a matter of doubt. It would suggest (when taken in conjunction with s. 27(1) and (2)), that the court should exercise a considerable degree of judicial restraint in the context of a review, although it must clearly intervene if failure to do so would result in an injustice."

20. Both component parts required by the section must be established before the court can intervene. The onus lies on the party challenging the determination of the Taxing Master to demonstrate that he has erred as to the amount of the allowance or disallowance and if such error is shown, that it has led to injustice. This was explained in the following terms by Hedigan J. in *Revenue Commissioners v. Wen-Plast (Research and Development) Ltd* [2009] IEHC 453 at para. 31:

> "It is clear there must be error and then, as a result thereof, injustice. I accept the dictum of Kearns J. in *Superquinn* that the court must always retain the power to intervene where failure to do so would result in an injustice. Such an injustice must however be clear, undoubted and manifest."

The Grounds of Challenge Advanced by the Respondent
21. The respondent, who appeared in person, relied on six grounds upon which he submitted the court should review the taxation. These were:

> 1. The applicant's solicitor was bound by the terms of the Rutherfords' letter above referred to so that for the period in question, he could not recover costs of more than €12,705. Mr. Simms claimed a figure of €56,265 for this period and the Taxing Master ultimately allowed a figure of €25,000. In fact the respondent went further at the hearing before me and

contended that the entire bill was invalid. I will address this further below.

2. The s. 68 letter previously referred to was invalid in that it failed to include any hourly rates and was issued 19 months after the taking of instructions.

3. The applicant's solicitor's bill of costs was invalid because it failed to identify for each item the time spent on it, the person who worked on it and that person's hourly rate.

4. The rulings of the Taxing Master did not constitute a 'root and branch' analysis of the bill of costs, which he was obliged to perform.

5. The applicant's solicitor is estopped from claiming more than €200,000 on foot of his bill of costs in circumstances where he gave an estimate of that figure to the applicant as being the likely costs of the proceedings.

6. The applicant ought have no liability for the costs of the two interim motions previously referred to which were characterised by MacMenamin J. as unnecessary.

22. I propose to deal with each of these grounds in turn.

1. The Rutherfords letter of 17th of June, 2008

1.1. The applicant's solicitor, Mr. Simms, gave oral evidence before the Taxing Master at the objections hearing as did the managing partner of Rutherfords, Mr. David Alexander. The Taxing Master accepted Mr. Simms' evidence that the letter of the 17th of June, 2008, was not brought to his attention until after the commencement of the taxation process. The respondent strongly disputes this evidence and contends in his written submissions that it is false and deliberately so. In his oral submissions he went further and said the bill was fraudulent and corrupt which meant that it must be disallowed in its entirety. There is no conceivable basis upon which the court could accept that submission. I reject that contention as being scandalous, devoid of any merit and without legal or evidential foundation.

1.2. The respondent adopts a secondary position of claiming that the letter of the 17th of June, 2008, gives rise to an estoppel against the applicant's solicitor which places an upper limit on his claim for fees for the relevant period. Whatever about when the letter was sent and when it was received, Mr. Simms has disputed throughout that he ever entered into any fee agreement with the applicant as alleged by the respondent. This was his uncontroverted evidence before the Taxing Master. The respondent seeks to cast doubt on that by relying on an excerpt from the transcript of the applicant's evidence at the trial of the action before MacMenamin J. Whatever interpretation the respondent may seek to put on that extract, the fact remains that the applicant has supported her solicitor's bill of costs throughout and not sought to challenge it in any way. This is inconsistent with the proposition advanced by the respondent that a fee agreement had in fact been concluded between the applicant and her solicitor.

1.3. As I have said, the Taxing Master came to the ultimate conclusion that he did not have jurisdiction to determine whether a fee agreement had been concluded between the applicant and her solicitor that gave rise to an estoppel. I believe the Taxing Master was correct in reaching that conclusion. It does not appear to me to be part of his function to determine disputed issues of fact as to whether or not a binding agreement had been concluded between a solicitor and his client regarding the level of fees that would be payable. That would be a matter which would require determination by a court, possibly in the context of proceedings brought by the solicitor for recovery of his fees. The Taxing Master was accordingly correct to disregard this issue and in this respect, no error has been demonstrated by the respondent.

2. The section 68 letter

2.1. In his principle ruling on the 11th of October 2012 and subsequent ruling on the objections of the 29th of May 2014, the Taxing Master concluded that there is no basis for reducing the costs claimed by reference to any perceived inadequacy in the solicitor's s. 68 letter. He considered that he had no jurisdiction to in effect impose a penalty upon the solicitor for failing to comply with s. 68, although in the event he considered that the section had been complied with.

2.2. The basis for the respondent's complaint here is primarily that the letter failed to specify an hourly rate for the relevant personnel dealing with the file and there was a further obligation to maintain time records on the part of the solicitor. The respondent is also critical of the Taxing Master using what the respondent calls an arbitrary early rate of €300 per hour as an exemplar against which to verify his assessment of the value of the work. However it emerges that it was in fact the respondent's cost drawer who actually proposed this figure which the Taxing Master accepted as being reasonable.

2.3. The respondent relies on the judgment of this court (Peart J.) in *A & L Goodbody Solicitors v. Charles Colthurst and Anor,* (unreported, High Court, Peart J., 5th Nove,ber, 2003) as authority for the proposition that the Taxing Master does in fact have jurisdiction to impose a penalty on a solicitor who fails to write a s. 68 letter to his client. In the course of his judgment, Peart J. said (at p. 16):

> "Firstly, the absence of such a letter is something which the Taxing Master may, if he wishes, take into account when deciding upon the appropriateness of the fees sought. If fees being charged are in excess of what the Taxing Master considers appropriate in the absence of prior notification of the basis of charges, it would be something he can have regard to, even if he might be prepared to allow the same fees where a letter had been written.
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> Secondly, the failure to comply with the requirements of the section is something which the Disciplinary Tribunal of the Law Society can have regard to in an appropriate case, and indeed has done so in recent times, resulting in the censure and fining of a solicitor who was found to have failed to comply with the obligations imposed upon solicitors by section 68.
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> In relation to the other submissions under this heading, I do not believe that section 68 was intended to deprive the solicitor, who has failed to send a section 68 letter, of his right to recover his costs when taxed, in spite of the fact that the section is worded in mandatory terms. I agree with Counsel for the plaintiff that if such were to be the consequence of failure to send the letter, it would have said so in clear terms given the seriousness of the

> consequence of failure to do so…The client's right to have all costs taxed in this fashion is the ultimate protection available, and the Taxing Master is fully empowered to take all relevant matters into account when performing that task, including the power to attach such significance to the absence of a section 68 letter as he deems appropriate in any particular case. There is of course also the right of a party dissatisfied with the determination of the Taxing Master to seek a review of the taxation by the High Court."

2.4. While therefore it is true to say that the Taxing Master can of course take account of the fact that a s. 68 letter was not written by the solicitor, particularly where higher than normal fees are sought in the absence of prior notice to the client, that is far from saying that the Taxing Master is thereby empowered to deprive the solicitor of costs to which he would otherwise be entitled. That is clear from the judgment of Peart J. It is also consistent with the judgment of Gilligan J. in *Boyne v. Bus Atha Cliath* [2008] 1 I.R. 92 where he held that the failure by a solicitor to send a s. 68 letter did not render the contract of a retainer between the solicitor and client unenforceable and therefore did not deprive the solicitor of his right to recover his costs.

2.5. Accordingly even if it were the case that the applicant's solicitor had not written a s. 68 letter, that would not form a basis for depriving him of his costs. The point is however academic in circumstances where the Taxing Master was satisfied that such a letter had been written. Furthermore, insofar as the Taxing Master had regard to relevant hourly rates and the practice of solicitors with regard to charging on such a basis or not as the case may be, the Taxing Master was clearly acting within the area of his own expertise and in that respect, he is entitled to significant curial deference as the authorities show.

2.6. Thus, no error has been demonstrated by the respondent under this heading.

3. Validity of the bill of costs

3.1. The respondent's complaint here is in essence that the authorities show that the Taxing Master is required to carry out a "root and branch" analysis of the bill and that cannot be done in the absence of time records. The respondent submits that a bill of costs that is not accompanied by time records should be considered invalid and the Taxing Master should refuse to tax it. In this regard, the Taxing Master said in his ruling of the 11th of October, 2012:

> "[T]he solicitor for the costs does not have a legal duty to keep an accurate time record as asserted by the husband. Time is but one of the factors to be taken into account in assessing fees. There is no statutory requirement that it should be recorded on an hourly or any particular basis."

3.2. This is an accurate statement of the law and consequently no error arises under this heading.

4. Failure to carry out a "root and branch" analysis

4.1. This complaint appears to overlap to a significant degree with the preceding ground in that the respondent again submits that the Taxing Master did not carry out a sufficient analysis of the time spent on each task and did not calculate the time for each item.

4.2. The solicitor's fee as claimed in the bill of costs submitted was €260,000. The figure allowed by the Taxing Master in his ruling was €205,500. This figure was arrived at by the Taxing Master analysing six different periods or phases of the litigation in a detailed manner and estimating the amount of hours involved in each phase together with a consideration of an appropriate hourly rate, as suggested by the respondent's own cost drawer.

4.3. I fail to see therefore how it can be suggested by the respondent that the Taxing Master did not carry out an appropriate time analysis in respect of the items of work the subject matter of the bill of costs. Thus no error arises here.

5. Alleged €200,000 estoppel

5.1. Similar considerations arise here as in ground no. 1. In his ruling on the objections, the Taxing Master considered that he did not have jurisdiction to determine the issue that the applicant's maximum exposure to costs should not exceed €200,000. For the same reasons as previously outlined in connection with the letter of the 17th of June, 2008, I am satisfied that the Taxing Master was correct in reaching this conclusion.

5.2. One of the difficulties that arises in this matter stems from the fact that it is extremely unusual, and quite possibly unique, for a solicitor and own client bill of costs to be taxed at the behest of a third party who has no liability for that bill, particularly in circumstances where the solicitor's client has stated in writing her support for the bill and her wish not to challenge it. The practical difficulty that arises in such a situation is well illustrated in respect of this ground. Here, the respondent alleges that a binding contractual commitment exists between the solicitor and his client, the applicant, which should limit the solicitor's costs in circumstances where the other party to that alleged contract, the applicant, asserts in writing that no such contract exists and no such commitment was ever given. The Taxing Master was undoubtedly correct in expressing the view that it may ultimately be a matter for the court to determine whether the respondent has the requisite *locus standi* to even advance such an argument.

5.3. It is difficult to envisage how it could ever arise. If such a contract did exist, it would presumably arise for consideration in circumstances where the solicitor sued for his costs and was met by the defence that a prior agreement had been entered into limiting those costs. Of course, the respondent would not be a party to such proceedings. How therefore the argument could arise in the first place is unclear.

5.4. Suffice is to say that I am satisfied that the Taxing Master was perfectly correct in deciding that this was not something he could embark upon.

6. The costs of the two interim motions.

6.1. The motions in question were brought by the applicant and were unsuccessful with the result that the costs in each case were awarded to the respondent. As previously mentioned, the court considered that these motions ought not have

been brought. The respondent extrapolates from this that it must follow that the applicant's solicitor cannot recover any costs from his own client in respect of these motions. The Taxing Master however determined that the applicant had given instructions that these motions should be brought despite counsel's advice that there were unlikely to succeed. They were grounded on affidavits sworn by the applicant.

6.2. Accordingly, O. 99 r. 11 (3) applies, which provides:

> "On a taxation as between solicitor and own client, all costs incurred with the express or implied approval of the client evidenced by writing shall be conclusively presumed to have been reasonably incurred, and where the amount thereof has been so expressly or impliedly approved by the client, to have been reasonable in amount."

6.3. Accordingly it seems to me that the respondent's objection on this ground is entirely misconceived.

Conclusion

23. As is apparent from the foregoing, in my view, the respondent has failed to establish any error by the Taxing Master in the allowance or disallowance of any of the items contained in the solicitor's bill of costs. That is the end of the matter under s. 27 (3) but even were it not, I am absolutely satisfied that no injustice has been shown to arise from the rulings of the Taxing Master herein.

24. Whilst that disposes of the application, it is in my opinion appropriate that I should express my view as to the manner in which this application was conducted by the respondent. As I have noted, the respondent made extremely serious allegations against the solicitor for the costs. Not only were these unsupported by evidence but they were in effect flatly contradicted by the client whose bill is the subject of the taxation, the applicant. I have already alluded to the fact that the order of MacMenamin J was unusual and quite possibly unique. Indeed, the Taxing Master in one of his rulings stated that he had never encountered such an order.

25. The order was quite specific in permitting a costs drawer to be retained by the respondent to make submissions in relation to the items of costs identified in the bill. I do not think that the court intended by making this order that the respondent in person should have been entitled to participate in this matter in the manner in which he has. The respondent invites the court to conduct a form of forensic investigation into the professional relationship between the applicant and her solicitor, a matter in respect of which he has no legitimate interest and no conceivable *locus standi*. Even were that not so, I have already concluded that the Taxing Master was correct in determining that he had no jurisdiction to, in effect, embark on the trial and determination of these issues.

26. The same perforce applies to the court in carrying out the limited form of review permitted by s.27 (3) of the 1995 Act. The applicant has sought leave to call Mr. Simms and Mr. Alexander to give oral evidence and be cross-examined by him, clearly with a view to the respondent attempting to establish some form of impropriety on their part. The only party entitled to make such a complaint is the applicant. I refuse that application for the reasons explained.

27. Accordingly I will dismiss this motion.