

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12378-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

BARJINDER SHARMA

Respondent

Before:

Mr J P Davies (in the chair)

Mr U Sheikh

Mrs L McMahon-Hathway

Date of Hearing: 14 November 2022

Appearances

Stephen Wade, solicitor, of Bishop & Sewell LLP, 59–60 Russell Square, London, WC1P 4HP, for the Applicant.

The Respondent did not attend and was not represented.

**MEMORANDUM OF APPLICATION FOR LEAVE TO
ENFORCE A COSTS ORDER**

Relevant Background

1. On 8 September 2010, the Tribunal Ordered, by way of an Order dated 26 October 2010, that the Respondent pay the costs of and incidental to that application and enquiry fixed in the sum of £15,000.00 inclusive of VAT and disbursements, such costs not to be enforced without leave of the Tribunal.
2. On 9 September 2022, Mr Wade, on behalf of the Applicant, had lodged an application for leave to enforce those costs.

Application to proceed in absence

Applicant's Submissions

3. Mr Wade told the Tribunal that the last communication with the Respondent was by way of email from his "hotmail" address to the Applicant on 7 April 2022. Prior to that, the Respondent attended an oral examination hearing in another jurisdiction which related to ascertaining his assets with regards a Charging Order placed on his "Vaughan Gardens" property.
4. Mr Wade averred that the Respondent had deliberately disengaged in the proceedings and was aware of the Applicant's intention to join other creditors to whom the Respondent was similarly indebted.

The Tribunal's Decision

5. The Tribunal enquired of the Deputy Clerk when notice of the Application and hearing date was communicated to the Respondent. The Deputy Clerk confirmed that the administrative team of the Tribunal had served papers on the Respondent via the "Hotmail" email address on 22 September 2022 which comprised:
 - Initial letter to the Respondent dated 12 September 2022.
 - Standard Directions – Application To Enforce Costs.
 - Family Court Order.
 - Official Copy (Register) EGL31698.
 - Property details [Vaughan Gardens].
 - Respondent's contact details.
 - External Privacy Notice.
 - Caselines Privacy Notice.
 - Caselines Proceedings Pack.
 - Guidance Note on Adjournments.
 - Guidance Note on Appeals 5th Edition.
 - Guidance Note on Other Powers of the Tribunal 6th Edition.
 - Guidance Note on Sanctions 10th Edition.
 - Judgment Publication Policy.
 - Leaflet 2019 Update.
 - Remote and Hybrid Practice Direction July 2022.
 - Data Protection Policy April 2022.
 - Zoom user guide for remote and hybrid hearings July 2022.

- SDT Rules 2019.
 - Practice Direction 1.
 - Guidance Note for Person Assisting a Party.
6. The Deputy Clerk further confirmed that hard copies of the above were not sent to the Respondent.
7. The Tribunal considered whether notice of the hearing had been given in accordance with Rule 44 of the Solicitors (Disciplinary Proceedings) Rules 2019 which provides:

“...

- (1) Any document to be sent to the Tribunal or any other person or served on a party or any other person under these Rules, a practice direction or a direction given under these Rules must be—
 - (a) sent by pre-paid first class post or by document exchange, or delivered by hand, to the Tribunal’s or other person’s office or as the case may be the address specified for the proceedings by the party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or
 - (b) sent by email to the email address specified by the Tribunal or other person or specified for the proceedings by a party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or
 - (c) sent or delivered by such other method as the Tribunal may direct.
- (2) Subject to paragraph (3), if a party specifies an email address for the electronic delivery of documents the Tribunal and other parties will be entitled to serve (and service will be deemed to be effective) documents by electronic means to that email address, unless the party states in writing that service should not be effected by those means.
- (3) If a party informs the Tribunal and every other party in writing that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to send documents to that party, that form of communication must not be used.
- (4) Any recipient of a document sent by electronic means may request that the sender send a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.
- (5) The Tribunal will proceed on the basis that the address, including an email address, provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary by that party or representative.

(6) ...”

8. The “hotmail” email address for the Respondent had been provided by the Applicant. It was the email address deployed by the Respondent when corresponding with the Applicant, most recently on 7 April 2022.
9. The Tribunal determined that by virtue of Rule 44(1)(b) and 44(2), the Tribunal was entitled to serve notice on the Respondent via the “hotmail” email address. In circumstances where the Respondent had not exercised his right to request to be served via hard copy to his residential address in accordance with Rule 44(3), the Tribunal was satisfied that service had been effected in accordance with the Rules.
10. Given finding with regards to service, the Tribunal proceeded to consider whether to exercise its discretion to proceed in the Respondent’s absence in accordance with Rule 36 which provides:

“...

If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing...”

11. In exercising its discretion, the Tribunal applied the principles promulgated in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at §22(5) namely:

“In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

- (i) the nature and circumstances of the defendant’s behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
- (ii) ...;
- (iii) the likely length of such an adjournment;
- (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
- (v) ...;
- (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
- (vii) ...;
- (viii) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates; (x) the effect of delay on the memories of witnesses;

(ix) ...;”

12. The Tribunal paid further regard to GMC v Adeogba [2016] EWCA Civ 162, in which Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At §19 he held:

“...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed”.

13. Leveson P went on to state at §23 that discretion must be exercised:

“...having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account”.

14. The Tribunal was satisfied that the Respondent had voluntarily absented himself from the hearing and in doing so had waived his right to be present. It was not in the interests of justice for the matter to be delayed any further and there was little purpose in adjourning the hearing as no indication had been given by the Respondent that he would attend in the future. The overarching public interest (which comprised the need to protect the public from harm, the declaration and upholding of proper standards within the profession and maintenance of public confidence in the regulatory system) required the expeditious consideration of applications. The present application was to enforce an Order imposed in 2010 for the Applicant to recover its costs in pursuing allegations of dishonesty levelled at and proved against the Respondent. The cost of that prosecution should not be borne by the profession in circumstances where the Respondent may have the means to satisfy the same.

15. The Tribunal therefore granted Mr Wade’s application to proceed in absence.

Applicant’s Application to Enforce Costs

16. Mr Wade invited the Tribunal to grant leave for enforcement of the order for costs made for the reasons set out in the letter dated 9 September 2022 namely:

“... we hereby submit an application to the Tribunal for a reconsideration of the issue of the costs order made following the hearing on 8th September 2010, with the Order against Mr Sharma actually being dated and filed with the Law Society on 26th October 2010. The full statement of the order that was made on that occasion is as follows:-

‘The Tribunal ordered that the Respondent, Barjinder Kumar Sharma Solicitor, be struck off the Roll of Solicitors and it is further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000 such costs not to be enforced without leave of the Tribunal.’

By this letter we apply for leave to enforce the order.

Original allegations against the Respondent

The original allegations were as follows:-

1. He failed to act in the best interests of his clients in breach of Rule 1.04 of Solicitors Code of Conduct 2007, namely:
 - (a) By failing to notify lender clients of material facts in transactions;
 - (b) By failing to register lender clients' interests;
 - (c) By transferring funds without clear authority to do so.
2. He failed to comply with undertakings given during the course of the conveyancing transactions, in particular, by way of certificates of title to lender clients.

The hearing on 8th September 2010

The Applicant was represented by Katrina Wingfield Solicitor and member in the firm of Penningtons Solicitors LLP of Abacus House, 33 Gutter Lane, London EC2V 8AR and the Respondent attended in person.

The Hearing centred upon three conveyancing transactions undertaken by the Respondent and the relevant issues were as follows:

- (a) In respect of the first transaction, a re-mortgage, false office copy entries were produced which did not show the existence of a charge in favour of a third party. As a result, the transaction completed and the re-mortgage funds sent on the instruction of the Respondent to a third party and the existing mortgage was not redeemed.
- (b) A second transaction in respect of a lease where material information had been withheld from the lender client.
- (c) A further conveyancing transaction in which the lender client had not received the relevant information from the Respondent.
- (d) In relation to all three conveyancing transactions, the Respondent had failed to comply with undertakings by providing false certificates of title to lender clients.

After consideration of the evidence all of the allegations against the Respondent were found proved and in addition the Respondent was found to have acted dishonestly. As a consequence, the order striking the Respondent from the Roll of Solicitors was made.

The issue of costs

The Applicant made an application for its costs to be paid by the Respondent and submitted a Schedule totalling £17,450.73 and asked for those costs to be assessed. The Respondent referred to his financial position and submitted that the costs were high. It is recorded in the Findings of the Tribunal that details of his financial circumstances were provided, but the exact details are not recorded.

In the circumstances, the Tribunal made an order for costs in the sum of £15,000.00 but ordered that those costs should not be enforced without leave of the Tribunal.

The SRA's subsequent investigations

Following investigation, it was discovered that the Respondent was the sole proprietor of a property at 86 Vaughan Gardens, Ilford, Essex IG1 3PD. Attached to this letter are the following documents relevant to that property:

- (i) Office copy entries for the property dated 18th April 2022, being the latest available copy of the register.
- (ii) An order of the Central Family Court.
- (iii) Extract from web page for Zoopla providing valuation for 86 Vaughan Gardens.

It can be seen that at present the value of the property is £632,000.00 to £698,000.00. After payment of prior charges, pursuant to the terms of the divorce settlement, the Respondent is entitled to 40% of the balance. There are a number of prior charges, but because of the restrictions on the terms of the order of this Tribunal, the Applicant is unable to seek to protect itself by way of a charge or charging order. Any subsequent creditors that may appear, will be able to obtain priority over the Applicant.

Between 20th and 22nd October 2009, the Respondent had also appeared with another before this Tribunal. On that occasion, the Respondent was ordered to pay £52,000.00 in respect of costs and that order was not restricted. It will be seen from the office copy entries that the Law Society (acting through its independently operated regulatory arm Solicitors Regulation Authority) obtained security for those costs by way of a charging order.

The legal position

In the case of *William Arthur Merrick v The Law Society* (2007) EWHC 2997 (Admin) and *Frank Emilian D'Souza v The Law Society* (2009) EWHC 2193 (Admin) a principle was established that the means of a Solicitor before the Tribunal should be taken into consideration when the Tribunal is making an order for costs in addition to a penalty particularly where that penalty is the

striking off or suspension of the Solicitor. The Tribunal in this case quite properly took the means of the Respondent into account and ordered that he be responsible for costs in the sum of £15,000 but in light of his circumstances at that time those should not be enforced without further leave of the Tribunal. It is not clear from the Findings of the Tribunal whether the equitable interest in 86 Vaughan Gardens was disclosed to the Tribunal and if it was, whether that was taken into account by the Tribunal hearing the matter on that occasion.

Merrick concludes that amongst the factors to be taken into account when deciding on the issue of costs are such factors as the Respondent's future earning capacity and whether the costs could actually be paid. The Respondent in this case, born in 1967, has had 12 years of possible earning capacity since the making of the order and has several more years of potential earning capacity until he would be due to retire.

The Tribunal has for some years adopted a scheme for dealing with issues of costs for impecunious respondents by ordering payment of costs but restricting the enforcement of those costs as in this case. The scheme clearly envisages that in circumstances where the respondent is in fact able to pay or secure the costs, an application can be made by the SRA for leave to enforce. It is to be noted that such restricted orders have become less prevalent in recent years, and it is submitted that this properly reflects the prejudice suffered by the Applicant when compared to any other creditors who are free to enforce their debts.

Conclusion

At the time of the Tribunal Hearing in September 2010, it was clearly concluded that the Respondent was in a poor financial position. He was, however, the beneficial owner of 86 Vaughan Gardens. It is not clear whether that was disclosed to the Tribunal or whether it was taken into account, but he still retains that interest subject to the division of the equity as ordered by the Family Court. The property has not yet been sold in accordance with that Family Court order.

The Applicant is at a disadvantage with any other creditors by not being able to secure its interest against the property at 86 Vaughan Gardens. It is difficult to say at the current time whether all creditors will be paid if 86 Vaughan Gardens is sold, but it is unfair and prejudicial for the Applicant not to be able to take its proper place in the order of priority if and when the property is sold.

In the circumstances, it is fair and reasonable for the Applicant to be granted leave to enforce the order for costs..."

17. Mr Wade provided up to date Official Copy (Register) EGL31698 entries and invited the Tribunal to allow the costs order to be enforced and to put the Applicant on the same footing as other creditors.

The Tribunal's Decision

18. In these proceedings the Respondent had been directed to file an Answer to the application and further to provide details of his financial circumstances. The

Respondent had failed to do so. The Tribunal found this to be of concern as it was information that would have ensured that the full picture was placed before the Tribunal prior to its final determination. However, the Tribunal was satisfied that the Respondent had deliberately chosen not to co-operate which was a matter for him. The Tribunal therefore determined the application on the evidence before it.

19. The Tribunal was entirely satisfied that it was fair that the Applicant have leave to enforce the costs order. The Respondent's appeared to have acquired an asset since September 2010. The Applicant should be placed on the same footing as other creditors and should not be precluded from attempting to recover the monies in the same way as any other creditor. The reputation of the profession required costs against solicitors against whom findings had been made to be recovered if possible. The reasons upon which the original restriction on enforcement of costs was predicated no longer represented the financial position of the Respondent.
20. The application for enforcement of the costs order was granted.

Costs

21. Mr Wade sought costs in the sum of £1995.00 which represented a reduction of 1 hour of his time from the costs schedule served on the Respondent in advance of the hearing.
22. The Tribunal was satisfied that the costs were reasonable and proportionate and saw no reason why the Respondent should not pay them in full. The Tribunal therefore ordered that he pay the Applicant's costs fixed in the sum of £1995.00.

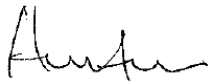
Statement of Full Order

23. The Tribunal Ordered that the Order made on 26 October 2010 be varied and the Tribunal grants leave to the Applicant to enforce the said Order for costs against the Respondent, Barjinder Sharma, in the sum of £15,000.00.

The Tribunal further Ordered that the Respondent do pay the costs of and incidental to this application fixed in the sum of £1995.00.

Dated this 17th day of November 2022

On behalf of the Tribunal



J P Davies
Chair