SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12386-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

DUNCAN JOHN DOLLIMORE Respondent

Before:

Mr R Nicholas (in the Chair)
Mr W Ellerton
Mr A Pygram

Date of Hearing: 21 April 2023

Appearances

Stephen Wade, solicitor, of Bishop & Sewell LLP 59-60 Russell Square London WC1B 4HP, for the Applicant.

The Respondent represented himself.

MEMORANDUM OF APPLICATION FOR LEAVE TO ENFORCE AN ORDER FOR COSTS

Relevant Background

1. The Respondent Mr Dollimore appeared before the Tribunal on 16 April 2016. An order was made against him and filed with the Law Society in the following terms:

   > "The Tribunal orders that the Respondent, Duncan John Dollimore of [address] 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 £10,000 such costs not to be enforced without leave of the Tribunal."

2. By a letter dated 4 October 2022, Bishop & Sewell LLP submitted an application to the Tribunal for leave to enforce the Order for costs ("the Substantive Order"). The letter included:

   > "… As a result of investigations carried out by the SRA, a new address for the Respondent was discovered at [address]. This was purchased by the Respondent and one Victoria Jane Thompson in 2019. The price paid was £444,000.00 and there are two charges outstanding on the property in favour of the Bank of Scotland and Optimum Credit.
   >
   > A copy of the up-to-date land register for this property is attached hereto.
   >
   > The property may have increased slightly in value since 2019, although we have been unable to find an online valuation for it. Although the Applicant has been a creditor of the Respondent since 2016, it is unable to protect itself by securing the debt against the property or otherwise. Any subsequent creditors will be able to obtain priority over the Applicant…"

3. Mr Dollimore filed an Answer dated 14 November 2022 contesting the application and giving details of his financial position and the ownership arrangements of the property referred to in the application including that he was only a 5% owner of the equity, his partner owning 95%. The property was held on a tenancy in common as to the different proportions. Ms Thompson filed a witness statement dated 13 November 2022 in support of Mr Dollimore's Answer.

4. The application was listed for hearing on 1 December 2022 prior to which a draft consent order was filed with the Tribunal signed by both parties for its consideration. At that hearing, the Panel raised concerns regarding the content of the consent order in relation to:

   (i) Interest claimed by the Applicant with regards the extant Order for costs.

   (ii) The Applicant's claim for costs in the application for leave to enforce the extant Order for costs.

   (iii) The agreement between the parties with regards the repayment of the extant Order for costs.

   (iv) Undertakings agreed between the parties in respect of Mr Dollimore and his partner (who was not party to the proceedings).

(v) The potential impact of the Consent Order on Mr Dollimore's partner and child if endorsed by the Tribunal.

5. Those concerns, which the Applicant was required to provide further instructions on, and practical difficulties, in relation to the Respondent's ability to continue to participate in the remote hearing, resulted in the hearing being adjourned. Full details of that decision can be found under separate memorandum dated 17 December 2022.

6. By way of an email dated 6 December 2022, Mr Wade sought to address the Tribunal's concerns with Mr Dollimore in the following terms:

> "… I refer to the hearing which took place on 1st December 2022 and I note the Tribunal has adjourned the matter to the first open date after 28 days. I have seen the report of my Counsel, which outlines the reasons why they would not endorse the consent order, but I have to say I think all of their concerns, bar one, are misconceived. I will deal with the one that I think might have some justification below and you will see from my comments that this issue is very easily resolved:
>
> 1. I understand that interest at 8% was queried. That is the Judgments Act rate. Orders of the Tribunal are enforceable as if they are made by the High Court pursuant to the provisions of Section 48(4) Solicitors Act 1974 and therefore as the equivalent of a High Court judgment, it carries 8%. That should not have been a query for the Tribunal.
>
> 2. I understand the Tribunal queried why you should pay costs. Our argument on that would be quite simply that you were given the opportunity to agree to an order to enforce before the application was made and chose not to do so. Costs follow the event and if an order for leave to enforce is made on whatever terms, it is right that the losing party pays the costs. So far, we have agreed to limit those costs to £750.00, but if this matter does drag on unnecessarily you can understand that my clients may wish to revisit that.
>
> 3. The Tribunal did not understand the phrase "on or after 1st July 2023". They seemed to think that that would affect the payment terms, but I do not understand their query on this at all. All we are saying is that until 1st July 2023, the existing order of the Tribunal remains in place but cannot be enforced without leave of the Tribunal. We are asking the Tribunal to give that leave from 1st July 2023 onwards. It does not affect the payment terms at all, which are quite separately dealt within the consent order. If we get to 1st July 2023 and the debt has not been paid, the SRA has leave to enforce and can take all normal steps to enforce a judgment debt. If they chose to proceed by way of a charging order, they go through the normal two stage process of an interim and final charging order. If they want to get paid by way of an order for sale, they have to issue separate proceedings, so in fact there are three stages they have to go through. I will revert to this subject further below.

4. The Tribunal seem to think they could not impose an undertaking on you because you are no longer on the Roll. It is not only solicitors who can give undertakings. As I am sure you are aware, parties to proceedings often given undertakings to pay costs or to give security for costs or undertakings as to damages, whether or not they are solicitors. The importance of a solicitor's undertaking is that if it is breached, it is enforceable by the courts because solicitors are officers of the court. Similarly, there are regulatory issues if a solicitor breaches an undertaking. It does not mean that other parties cannot give undertakings. Again, I do not understand their issue on this point.

5. The only point where I thought the Tribunal may have a justified issue is that the terms of the undertaking, as stated, would involve third parties and some issues might be out of your control. For example, if after the order was made your partner decided not to give the undertaking, that would render the clause in the order pointless. However, that issue can be easily circumvented by inserting a "best endeavours" clause within the relevant paragraph. For example, if after the making of the order your partner decided not to give the undertaking, but you use your best endeavours to ensure that she did, you will have complied with the order. In that event, there would have to be a default clause in that if the undertaking was not provided, the SRA would need to be permitted to go back to the Tribunal to pursue their application for leave to enforce. Similarly, if you did everything in your power to procure the undertaking, your partner gave the undertaking but for some reason the sale either did not go through or the solicitors acting refuse to hand over the money in time, the default provisions in the order would take effect, namely that leave to enforce would commence on 1st July 2023. Again, providing you had complied with the best endeavours clause, you would have complied with the order.

6. The Tribunal seems to have been concerned that your partner was being asked to provide an undertaking. That of course was offered by you and quite reasonably you did so because your partner is a solicitor. That would add extra security for the SRA, which quite clearly was what you wanted to supply.

7. The Tribunal seems to think that the order was effectively a method whereby you and your partner and family lost their home. Of course, it was you that offered that proposal in the first place, but given the equity in the property, most of which belongs to your partner, there is no reason to suppose that you would not be able to purchase a new home, albeit very slightly smaller. The Tribunal seems to think that the checks and balances which normally occur in a charging order application would not exist. That is simply incorrect. If you do not sell the house and the SRA are given leave to enforce the order, if the SRA wanted to apply for a charging order, they would have to go through exactly the same process as any other creditor.

8. The Tribunal also appear to want further detail in respect of the other secured creditors. Again, I think that is a misconceived concern. The other creditors already have priority over the SRA and if the property is sold, they will be protected in preference to the SRA.

You will see from the above that I think the Tribunal adopted a misguided approach to this matter. I think your approach and the assurances that were being given to the SRA were perfectly reasonable and strike a balance between the rights of the SRA and the protections that need to be given to you and your family. I also think that if the "best endeavours" clause is added to the necessary sections of the draft order, in reality that would give the Tribunal all the assurances that they need with regard to the rights of third parties.

Obviously, in light of the order that was made and the comments of the Tribunal, we need to final an alternative resolution to this matter. I believe that the best endeavours clause will solve matters, but if you have any other views, please do let me know. If we cannot agree, the matter will need to go back before the Tribunal. The costs will increase substantially and I will be seeking leave to enforce the original order for costs if a satisfactory approach cannot be found.

Please get back to me as quickly as possible on this and in any event, this side of the Christmas break…"

7. No response was received to that communication therefore Mr Wade sent a further email on 21 December 2022 in the following terms:

"… However, I do hope that we can resolve this matter without further recourse to the Tribunal. Having now had the chance to consider the Memorandum setting out the full judgment of the Tribunal on the first occasion, I see that there were practical difficulties that occurred on the day of the hearing and in the end the Tribunal decided to treat the matter as a case management hearing. They have then set out their concerns and I think these can be summed up by saying that the Tribunal was concerned about the extent of the orders that it was being asked to approve. In paragraph 12.5 of the Memorandum, they point out that they were being asked to decide an application to enforce a costs order, but then were being asked to add various other clauses. There were a large number of such concerns and it was clear that the matter could not have been resolved on the day.

However, you and my clients have obviously already agreed what the solution to this matter is. Therefore, it is perhaps unnecessary to seek the Tribunal's approval of what has already been agreed. Of course, at the moment, as the Tribunal has not approved what we have agreed, so my clients do not have an automatic right to enforce the terms of that agreement. Therefore, what really needs to be done here is a two-stage process:

1. You and I agree a simple order which gives confirmation that the SRA has leave to enforce the existing award of costs with a contribution from you of £750.00 towards the cost of the application to the Tribunal. We add nothing further to the order and simply ask the Tribunal to approve it in those terms.

2. Separately, you and I should conclude an agreement which encompasses the terms that we have agreed elsewhere. This will in effect be a Deed of Settlement. It should include Ms Thompson as a party because she has agreed to give an undertaking…"

8. No response was received to that communication therefore Mr Wade sent a further email on 11 April 2023 in the following terms:

> "… I refer to the forthcoming hearing listed for 21st April and note that I have not heard from you further with regard to settling this matter. In the circumstances, I propose to prepare for the hearing as a contested application. I will be seeking an order for leave to enforce the previous costs award and would also be seeking a full order for costs in respect of the current application. I will let you have an updated Schedule of Costs shortly before the hearing. In the meantime, I will be updating the bundle of documents on the CaseLines system. I propose to include the memorandum of the previous hearing, as well as the Consent Order that we signed prior to the initial hearing. I will also include the Notice of Hearing received from the Tribunal…"

9. Mr Dollimore responded to that email on 12 April 2022 in the following terms:

> "… As you know, I did sign a consent order, which the tribunal declined to approve and raised concerns about. That is why this matter was adjourned, primarily for the SRA to address those concerns.
>
> In your email to me dated 6 December you largely dismissed the concerns raised by the Tribunal members, indicating they were misconceived or incorrect. This is therefore not so much a contested hearing, but rather one where an applicant seeking leave has yet to address concerns raised by the Tribunal, not the respondent.
>
> In the circumstances, I would be obliged if you could include your letter of 6 December 2022 within the bundle. I would merely add at this stage that I sought to agree a settlement of this matter, which the Tribunal declined to accept given their concerns regarding the implications of an order you drafted. In those circumstances, whatever the Tribunal determines on the primary question of leave to enforce, I would argue that it would be unreasonable to hold me liable for further costs.
>
> On a separate note, I should provide an update on my circumstances.
>
> The property I live in with my partner and step-daughter … has been on the market for some months, with an asking price of £525,000 … We have had some viewings, but no offers, and as you will be aware, property prices are now declining. Accordingly, whilst we are still looking to sell the property, the prospects of this happening imminently are not high…"

10. Mr Wade responded to that email on 13 April 2023 in the following terms:

> "… Thank you for your email of 12 April 2023 which you will have noticed arrived during my days leave. I have now had a chance to consider it and with respect I think you are giving a wholly misleading interpretation to recent events. We have reached the situation of being on the verge of a further hearing before the tribunal solely because you have ignored all of my correspondence since the last hearing.

Far from failing to deal with the concerns of the tribunal I set out my views on those concerns in full in my letter of 6 December. Of course we have not persuaded the tribunal as to the merit or otherwise of those concerns yet because we have not yet been back before the tribunal.

More importantly once I had a chance to consider the full memorandum of the tribunal I wrote to you again on 21 December setting out that I now understood that the tribunal were being asked to consider matters above and beyond the substance of the application that was before it. I therefore suggested a resolution which avoided the need to consider the detailed concerns of the tribunal, on 30 January I even submitted to you a draft Consent Order for your approval. You ignored all of this correspondence despite the fact that you have already agreed to the enforcement of the Costs Order and agreed steps for the implementation of the enforcement of that Order.

You are solely responsible for the costs that have been thrown away and I will produce all of the correspondence to the Court which will clearly demonstrate that this is the case. You have failed to comply with the payment terms of the agreement that we reached and have refused to engage with me to resolve this matter.

As I explained to you in more recent correspondence, the only Order I am seeking from the tribunal is enforcement of the existing costs award and an Order for Costs. Do you agree that the Order for Costs of the tribunal can now be enforced? If you do, then the hearing on 21 April 2023 can be reduced to an argument in respect of costs. If you do not then I will be submitting to the tribunal that: -

a. You have already agreed to the enforcement of the costs awards and the terms upon which that enforcement should take place; and

b. In any event it is just and reasonable for the SRA to have leave to enforce in order to counter the prejudice that is being caused to them vis-a-vis other creditors, although you have a limited interest in your matrimonial home, it is an asset from which payment of the costs can be made. Therefore the grounds for imposing the limitation on the costs awarded in the first place do not exist. Further, given your partner's superior interest in the equity in the property there is no question of you being unable to be rehoused following the sale of the property…"

The Adjourned Application

The Applicant's Submissions

11. Mr Wade submitted that the application for leave to enforce the Substantive Order was agreed in principle. The contentious issue remained in respect of the interest ("the interest claim") which the Applicant would seek on the Substantive Order at the statutory rate of 8% given that s48(4) of the Solicitors Act 1974 provides:

> "…An order which has been filed shall be treated, for the purpose of enforcement, as if it had been made by the High Court…"

12. Mr Wade made plain that the interest claim was not a matter for the Tribunal and fell to be determined by the High Court upon application for enforcement of the Substantive Order. Mr Wade therefore contended that any challenge to the same could and should be made by Mr Dollimore before the High Court in due course.

13. Mr Wade reiterated that the Applicant sought permission alone for the restriction imposed on the Substantive Order to be lifted so as to enable the Applicant to seek enforcement.

The Respondent's Submissions

14. Mr Dollimore disputed the contention that he agreed in principle for permission to be granted for enforcement of the Substantive Order. He contended that was a matter that the Tribunal was required to determine and in so doing should take into account (i) delay on the part of the Applicant in making the application (7.5 years after it was imposed), (ii) fairness to him, his partner and her daughter (iii) prejudice to him, his partner and stepdaughter and (iv) the Applicant's position with regards to the interest claim.

15. With regards to delay, Mr Dollimore submitted that the delay in making the application for enforcement was unfair and prejudicial in that it had allowed interest to accrue over a longer period of time. Mr Dollimore relied upon s24 of the Limitation Act 1980 which provides:

> "…
>
> 24(1) An action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.
>
> 24(2) No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due…"

16. Mr Dollimore accepted that, in the event that permission was granted by the Tribunal, the Applicant would be required to explain to the High Court the reasons for delay beyond the six-year limitation of time in respect if the interest claim.

17. Mr Dollimore averred that he had not appreciated the impact of delay when he endorsed the Consent Order produced to the Panel on 1 December 2022. It was only when the Panel itself raised concerns regarding the same that he considered the legal position. Mr Dollimore expressed his concern that the Applicant sought and obtained his agreement to pay interest in sums beyond that which it was statutorily entitled in circumstances where he was not legally represented.

The Applicant's Reply

18. Mr Wade accepted that the Consent Order had claimed interest up until the point of sale of the property. He further accepted that if permission to enforce was granted by the Tribunal, the Applicant would, in its substantive application for enforcement in the High Court, be bound by the provisions of the Limitation Act 1980 and accordingly its interest claim would be limited to six years at 8%. Mr Wade submitted that the reason why the previous Consent Order went beyond that was because "Mr Dollimore [had] agreed" the terms contained therein.

19. Upon questioning from the Tribunal, Mr Wade reiterated that the application that fell to be determined was for permission to enforce the Order for Costs dated 16 April 2016 in the sum of £10,000.00, in respect of which the Applicant intended, in any subsequent High Court enforcement proceedings, to claim interest thereon in the sum of approximately £4,800.00. Mr Wade maintained that any challenge to the intended claim for interest on the part of the Applicant lay with the High Court and was not a matter for the Tribunal.

The Tribunal's Decision

20. The Tribunal was required to determine the discrete binary issue of whether permission should be granted to the Applicant to enforce the Substantive Order for it to recover costs in the sum of £10,000.00 so ordered on 16 April 2016. It was beyond the jurisdiction of the Tribunal to consider the reasonableness or otherwise of how the Applicant sought to enforce the same in the event that permission was granted save insofar as it related to Mr Dollimore's ability to pay the costs of the present application for permission.

21. Mr Dollimore had acquired an asset in July 2019 namely a 5% equitable interest in a property which amounted to approximately £16,000.00. Moreover, Mr Dollimore was in gainful employment which attracted a salary of nearly £50,000.00. In his own submissions before the Tribunal, Mr Dollimore accepted that his financial position had improved since April 2016, he was no longer impecunious and he had the means to meet the terms of the Substantive Order.

22. The Tribunal was therefore satisfied that it was fair that the Applicant have leave to enforce the costs order. 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.

23. 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.

24. The application for permission to enforce the Substantive Order was therefore GRANTED.

Costs

The Applicant's Submissions

25. Mr Ward applied for costs in the sum of £4,416.00 as particularised in the Applicant's Schedule of Costs dated 18 April 2023. Mr Wade explained to the Tribunal that the previous application for costs (which was in the sum of £750.00) was part of the original Consent Order and took into account the agreement that had been reached between the parties that permission to enforce the Substantive Order be endorsed by the Tribunal.

26. Mr Wade contended that, given the concerns raised by the Tribunal on the last occasion, additional work was required on behalf of the Applicant to reach an agreed approach solely in relation to the issue of permission. Mr Wade accepted that the original Consent Order went beyond that and sought endorsement of the manner in which repayment of the Substantive Order was repaid. Mr Wade accepted that was not a matter that fell to be determined by the Tribunal and was one that could be negotiated between the parties and/or enforced by way of a writ of execution/Consent Order filed at the High Court.

27. Mr Wade submitted that he therefore sought to narrow the issues with Mr Dollimore to the discrete question of permission by way of the correspondence dated 6 December 2022 and 21 December 2022. Mr Wade contended that, as far as the Applicant was concerned, the concerns raised by the previous Tribunal had been properly addressed such that they had fallen away. The position as at December 2022 was to seek agreement from Mr Dollimore that (i) permission be granted and (ii) he pay a contribution to the Applicant's costs in the sum of £750.00.

28. In circumstances where no response was received, further correspondence was sent on 11 April 2023 which elicited a response from Mr Dollimore on 12 April 2023 that was subsequently responded to in April 2023. In short, it was clear that agreement would not be reached which necessitated the contested hearing before the Tribunal.

29. Mr Wade submitted that the hearing was only required because Mr Dollimore "failed to provide agreement to that which he previously agreed. The further costs and unnecessarily long hearing [was as a consequence of that failure]."

30. Mr Wade averred that the application for the costs of should be granted subject to a reduction of 1 hour in respect of the time spent at the hearing in circumstances where a modest hourly rate was claimed which did not reflect the true cost to the Applicant.

The Respondent's Submissions

31. Mr Dollimore submitted that it was "unfair and misleading" for Mr Wade to have suggested that the additional costs incurred were as a consequence of his conduct. Mr Dollimore reiterated and maintained that the fault lay with the Applicant its drafting of the Consent Order which raised justifiable concerns with the Tribunal on the last occasion.

32. Mr Dollimore made plain that had it not been for the previous concerns raised, he would have been bound by a Consent Order which included the repayment of interest to which the Applicant was not entitled in law. Those concerns caused confusion to

Mr Dollimore who was representing himself in very difficult circumstances. Mr Dollimore maintained that the Applicant's costs had increased through no fault on his part.

33. With regards to the quantum of costs, Mr Dollimore stated that "it would be inappropriate to say that [he] couldn't afford to pay anything". He accepted that his financial circumstances had improved such that he was no longer impecunious. Mr Dollimore advised the Tribunal that he could afford repayments of £100.00 per month.

The Tribunal's Decision

34. The Tribunal carefully considered the competing submissions of the parties.

35. The Tribunal firstly considered the application advanced by Mr Wade. The Tribunal accepted that the original sum agreed of £750.00 was predicated on the Tribunal's endorsement of the Consent Order filed on the last occasion, represented a commercial decision on the part of the Applicant and did not truly reflect the extent of costs incurred.

36. The Tribunal was deeply concerned that the Applicant, in that Consent Order, sought to recover interest to which it was not statutorily entitled. The Tribunal found the contention that the Applicant did so simply because Mr Dollimore had previously agreed to the same deeply unattractive.

37. Moreover, the Tribunal rejected the suggestion that costs had increased as a consequence of Mr Dollimore's conduct. Mr Dollimore had submitted, and the Tribunal accepted, the impact of representing himself in difficult circumstances and the confusion that flowed from the concerns raised with regards to the content of the Consent Order. The Tribunal accepted that such confusion may well have contributed to his reluctance to reach agreement with the Applicant absent oral submissions being made to the Tribunal. The Tribunal determined that the increased costs were borne out of the misconceived Consent Order in respect of which concerns were raised by the Tribunal and which were only clarified by written correspondence during the adjournment period and oral submissions before the Tribunal.

38. Notwithstanding the matters alluded to above, the Tribunal proceeded to consider the costs as claimed subject to the deduction of £175.00 (representing an hour of Mr Wade's time). The Tribunal accepted that those costs were reasonable and proportionate save for the time spent on the misguided Consent Order.

39. The Tribunal noted that, beyond Mr Dollimore's witness statement, he had not filed a financial statement of means and/or supporting evidence with regards his disposable income or equitable interest in the property. The Tribunal assessed his ability to meet the costs of the application for permission on the basis of his oral submissions and in the context of the outstanding judgment debt of £10,000.00 absent any interest that the Applicant may seek to pursue in the High Court.

40. Whilst not a direct concern to the Tribunal for the purpose of the primary application for permission to enforce, the indication provided by Mr Wade that the Applicant proposed to seek interest (which amounted to approximately £4,800.00 over six years) on the Substantive Order for costs (namely £10,000.00) was highly relevant to Mr Dollimore's ability to repay the present application for costs (in the sum of £4,416.00).

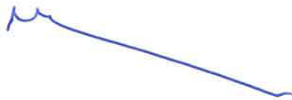
41. The Tribunal noted that Mr Dollimore did not have the benefit of a lump sum to meet his debts. Mr Dollimore made plain his intention satisfy his debts by way of instalments. The Tribunal applied the principle promulgated in Barnes v SRA [2022] EWHC 677 (Admin) that costs should be capable of being paid off within a reasonable time given the financial position of the Respondent. The Tribunal therefore determined that Mr Dollimore do pay a contribution to the Applicant's costs fixed in the sum of £1,000.00.

Statement of Full Order

42. The Tribunal Ordered that the Order for costs made on 16 April 2016 be varied and the Tribunal grants leave to the Applicant to enforce the said Order for costs against the Respondent, Duncan John Dollimore, in the sum of £10,000.00.

The Tribunal further Ordered that the Respondent do pay the costs of and incidental to this application fixed in the sum of £1,000.00.

Dated this 2nd day of May 2023
On behalf of the Tribunal



R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
02 MAY 2023