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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
[2021] EWHC 1666 (Ch)



CH-2020-000135

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Tuesday, 23 March 2021

Before:

MR JUSTICE ADAM JOHNSON

B E T W E E N :

MR JOHN DA ROCHA-AFODU

Appellant

- and -

LAW SOCIETY OF ENGLAND & WALES
(SOLICITORS REGULATION AUTHORITY)

Respondent

THE APPELLANT appeared in Person.

MS G. HANSEN appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE ADAM JOHNSON:

- 1 The appellant is a solicitor who was admitted to the Roll in March 2005, although it seems that for certain periods during 2012 he was non-practising. On 5 May 2020 Master Teverson made an order against him on the application of the Solicitors Regulation Authority, acting as the independent regulatory arm of the Law Society of England and Wales. The order was made under section 44B of the Solicitors Act 1974. This is the rolled-up hearing of the appellant's application for permission to appeal with the appeal to follow if permission is given. Since I have heard full argument from both sides, it seems to me appropriate to treat the case as one in which permission to appeal has been given, and for this judgment therefore to be treated as a judgment on the substance of the appeal.
- 2 The background may be stated briefly as follows. In about June 2015 the appellant was working as a freelance solicitor at MartynsRose Solicitors in London. The firm was instructed by a Mr Oladimeji. He had been made bankrupt in 2011. By 2015 he had been discharged from bankruptcy but nonetheless his trustee had applied for an order for the sale of a property at 37 Saville Road, London E16, in which Mr Oladimeji had an interest. Mr Oladimeji however claimed that his wife was the owner or part owner of the Saville Road property. He therefore began proceedings to have her interest recognised. It was that matter on which the appellant was instructed in June 2015.
- 3 Mr Oladimeji's application was apparently heard in August 2015, but the upshot was that Mrs Oladimeji was substituted as the correct applicant in place of Mr Oladimeji. The appellant says that the MartynsRose retainer on behalf of Mr Oladimeji therefore came to an end at that point. The appellant then says that he had what he describes as "private business discussions" with Mrs Oladimeji. The nature of those discussions was about how Mrs Oladimeji could buy out the trustee's interest in the Saville Road property. The appellant was to provide her with what he called "private assistance" in doing so.
- 4 It seems that at a much earlier point, in about 2011, a number of Mr Oladimeji's family members had put together funds totalling some £45,000 in order to assist Mr Oladimeji with his bankruptcy. The appellant's case is that Mrs Oladimeji told him about these funds in early 2016, which she said were to be returned to the family members. Then, in April 2016 the funds were transferred to a company called Helmbridge Limited. Helmbridge is a company associated with the appellant in various ways, including in the sense that at various times he has been a director of it along with his father.
- 5 On 3 May 2016 Helmbridge Limited entered into a letter agreement with Mrs Oladimeji which provided as follows:

"Re: Payment of £45,000 made on 29 April 2016

We write in relation to the above matter, and to inform you that we have received the above payment in accordance with your instructions that is money donated from various people to assist your husband - Mr Johnson Tunde Oladimeji, in his bankruptcy matter.

We await your instructions as to the distribution of the said funds.

As a business which performs personal services to clients, we as advised would charge £300 plus VAT total £360 for this service.

We thank you for your custom.

Yours sincerely,
Helmsbridge Limited."

- 6 The appellant's case is that then in later periods Mrs Oladimeji gave permission for the funds provided to Helmsbridge to be used in making certain investments on her behalf. I should mention that during this entire period it seems that Mr Oladimeji, who had been convicted of certain drugs-related offences in late 2014, was in prison. It seems he was released at some point in 2017, or perhaps 2018. In any event, at some point after that, he made a complaint to the Solicitors Regulation Authority.
- 7 His complaint was that the £45,000 had been provided to the appellant to enable him to negotiate with his, i.e. Mr Oladimeji's, trustee in bankruptcy, and not for other purposes. Mr Oladimeji also claimed that the appellant had suggested the £45,000 be paid to Helmsbridge because he, i.e. the appellant, did not have access to a client account.
- 8 Against that background the SRA's evidence is that it is concerned as to whether the appellant took unfair advantage of Mr and / or Mrs Oladimeji. It is also concerned as to what the appellant actually did with the £45,000. It seems that much of it has been repaid, but that does not fully address the SRA's concerns. There is also concern as to the legitimacy of Helmsbridge, the investment company with which the appellant is associated.
- 9 The Solicitors Regulation Authority has wide powers under section 44B to require persons over whom it has regulatory responsibility to provide documents and information. Those persons include solicitors. The appellant's argument before the Master, and indeed before me, was that in his dealings with Mrs Oladimeji, he was not acting in his capacity as a solicitor. Instead, he was acting in his private capacity. He says the SRA has no jurisdiction over him in relation to such acts, and neither does the court. Consequently, Master Teverson was wrong to make his order of 5 May 2020.
- 10 The appellant has referred to a number of authorities in which this distinction between acting as a solicitor and acting in some other capacity has been recognised, including *Law Society v Ete & Others* [2019] EWHC 864 (Ch) in which HHJ Keyser QC, in a matter involving an intervention in a solicitors' practice, refused to make a blanket order for the disclosure of a personal email account, which had only occasionally been used for business purposes. Instead he made a more limited order for disclosure only of emails on the account relating to the solicitor's practice of the individual involved.
- 11 Before the Master and before me, the appellant also invoked his rights under Article 8 of the European Convention on Human Rights, i.e. his right to privacy.
- 12 As to the Master's judgment, after referring to the relevant statutory provisions and to *Law Society v Sibley* [2017] EWHC 1453 (Ch), the Master's key finding was at [17] of his judgment as follows:

"Having considered the evidence and read the full skeleton argument of Mr da Rocha [i.e. the appellant], I have to decide whether it is proper and necessary for this matter to be further investigated. Mr da

Rocha, as I said, makes as one of his core submissions that the SRA does not have power to look into matters that he was dealing with in a capacity otherwise than a solicitor. In my judgment the evidence in the present case shows that there was a clear link or nexus between the defendant's practice as a solicitor and the concerns that are being investigated. Mr O was the defendant's client in his capacity as a solicitor. It was as a result of the matters arising out of Mr O's bankruptcy that the sum of £45,000 was placed by Mrs O into the account of Helmbridge Limited."

I should mention that Mr O referred to by the Master is of course Mr Oladimeji.

- 13 It seems to me that in order to succeed on his appeal, the appellant needs to challenge the Master's essential reasoning in [17] of his judgment. Having considered the matter carefully, including in light of the appellant's very careful and helpful submissions to me today, I am afraid I have formed the judgment that he cannot do so. I say that essentially for the following reasons:
- 14 To begin, with the Master correctly reminded himself that the power under section 44B is a broad one. Where a person is a solicitor the SRA may give a notice under the section if satisfied that it is necessary to do so for the purposes of investigating either (a) whether there has been professional misconduct or (b) whether the solicitor has failed to comply with any requirements of the Solicitors Act or any relevant rules.
- 15 The Master also reminded himself, by reference to the *Sibley* case I have already mentioned, that at the investigation stage the question is not whether the relevant grounds of complaint are actually made out, but only whether there are proper grounds for the notice or notices being issued. Neither the issue of a notice nor the making of an order by the court imply a finding of misconduct. The question is only whether there are proper grounds for making an order for the purpose of furthering a legitimate investigation.
- 16 Here, based on the evidence, the Master held that there were such proper grounds, and it seems to me that was an assessment which was open to him on the facts, and which I should not interfere with. His basic point seems to me in any event to be unassailable. It is that one cannot draw a hard and fast distinction between the appellant's role as a solicitor and his role in this case as a private investment adviser or manager. That is for the reasons the Master gave.
- 17 The appellant's connection with Mrs Oladimeji arose as a result of him acting for Mr Oladimeji. The £45,000 had apparently been provided to Mr Oladimeji by family members to assist in his bankruptcy, and it was in connection with ongoing aspects of Mr Oladimeji's bankruptcy, notwithstanding his discharge, that the appellant acted for him. The appellant's own case is that the £45,000 was eventually used to try and raise funds to enable Mrs Oladimeji to acquire the share in the Saville Road property claimed by Mr Oladimeji's trustee.
- 18 In all those circumstances I find it impossible to fault the Master's essential reasoning, i.e. that there is a clear link or nexus between the appellant having acted as a solicitor and the concerns that are being investigated.
- 19 The appellant had a number of particular points of challenge. I will deal with them in turn. First, he argued that the Master's reasoning in [17] of his judgment was not open to him

because of the following concession recorded at paragraph 19 of the first witness statement of Ms Aldwinckle, solicitor for the SRA, namely:

"Having reviewed the Documents, the Investigation Officer confirmed that he was satisfied that payment of the Sum by Mrs Oladimeji was made in the full knowledge that it was not linked with the Firm, and was to be invested by Mr da Rocha-Afodu through the Investment Company."

The "Firm" referred to is MartynsRose Solicitors.

20 With respect I think the appellant reads too much into this quotation. It is true that the investment was to be made through Helmbidge Limited which was not linked to MartynsRose Solicitors, but that is not the same thing as saying that there was a hard and fast distinction to be drawn between the circumstances in which the appellant was introduced to Mrs Oladimeji, i.e. through his acting for Mr Oladimeji, and the later role he admittedly performed in investing the sums she made available. That I think deals with the appellant's first point.

21 The appellant's second point is that the order sought may encompass privileged documents. I am not persuaded that that is correct because the order is really confined to documents and information concerning the treatment of the £45,000. But even if I am wrong about that, it seems to me that Ms Hansen is correct to say that the answer lies in paragraph [32] of the speech of Lord Hoffmann in *Special Commissioner v Morgan Grenfell* [2002] UKHL 21 where Lord Hoffmann said as follows:

"This is not to say that on its facts the *Parry-Jones* case was wrongly decided. But I think that the true justification for the decision was not that Mr Parry-Jones's clients had no LPP, or that their LPP had been overridden by the Law Society's rules, but that the clients' LPP was not being infringed. The Law Society were not entitled to use information disclosed by the solicitor for any purpose other than the investigation. Otherwise the confidentiality of the clients had to be maintained. In my opinion, this limited disclosure did not breach the clients' LPP or, to the extent that it technically did, was authorised by the Law Society's statutory powers. It does not seem to me to fall within the same principle as a case in which disclosure is sought for a use which involves the information being made public or used against the person entitled to the privilege."

22 That same logic, it seems to me, applies here, and that deals adequately with the appellant's second point.

23 The appellant's third point was that the order improperly requires disclosure of Helmbidge's documents. That is improper, he argues, because Helmbidge is a private company which is not regulated by the SRA. That is true, but the appellant is so regulated, and the order only seeks documents from him, which must mean only documents within his possession, custody or control. A similar analysis was adopted by Birss J, as he then was, in the *Sibley* case at [29] where he said:

"It is true that the SRA has no jurisdiction over Sibley Strategic as such but that is not relevant. The SRA does have a jurisdiction over

Mr Sibley, and it is entitled to require him to provide the information in accordance with its wide powers under section 44B in order to investigate the relationship between the provision of legal services and the conduct of a solicitor."

- 24 Viewed in this light, I see nothing inherently objectionable in the Master's order. It will be a matter of fact precisely what is in the appellant's custody or control, and I am not able to determine such matters today. Suffice it to say that in the circumstances of this case, I see nothing improper in an order which requires the appellant to produce Helmbridge Limited documents to the extent that they are within his possession, custody or control.
- 25 The appellant's fourth point is that the order infringes his right under Article 8 of the European Convention on Human Rights, i.e. the right to privacy. In making that point, he has referred to a number of authorities, including *Beckwith v The SRA* [2020] EWHC 3231 (Admin) in which the Divisional Court emphasised the importance of caution where an investigation might impinge on a solicitor's private affairs. In the present case however I am satisfied that no issue arises, and that the Master was correct to make the order he did. Although he did not address the point expressly in his judgment, the information sought, it seems to me, is not really information private to the appellant. It is information which Mrs Oladimeji is entitled to, about what has happened to the funds she invested.
- 26 Further, the Article 8 right is a qualified right in the sense that it can be interfered with in accordance with law, here in accordance with statute, to the extent necessary in a democratic society. Thus, even if there is some interference with the Article 8 right in this case, it seems to me it is justified because all that is sought to be done is to enquire into the whereabouts of funds entrusted to an investment adviser or manager. I am satisfied that the order made is appropriate, it is crafted so as to capture information relevant to the investment of the £45,000 only, and in relation to bank statements, for example, is expressly limited so as to permit the redaction of irrelevant entries. I think the Master was correct to conclude that the order he made was therefore not only appropriate but also proportionate in the way it was expressed.
- 27 Finally and for completeness, I should say I do not see any merit in the further argument made by the appellant that the wrong procedure was used for the SRA's application, i.e. CPR part 8. The order endorsing that approach was originally made by Master Bowles in February 2020, and there was no appeal against that decision at the time.
- 28 Overall therefore I conclude that the Master's decision was adequately reasoned, and indeed was persuasive on the key point of principle. I do not think that the Master misdirected himself on the law, or took irrelevant matters into account in exercising his judgment, or left out materially relevant matters informing his overall determination. For all those reasons I therefore dismiss the appeal. Thank you.

LATER

MR JUSTICE JOHNSON: I will deal with costs. It is not really appropriate for me to interfere with the determination on costs made by the Master. That was really an exercise of his discretion based on the information available to him arising from the hearing which he conducted. I do not see that there was any error of principle. Mr da Rocha has mentioned the fact that parts of the fourth witness statement effectively were excluded, but the Master refers expressly to that point in paragraph [8] of his costs judgment, and so plainly had it in mind. He made his determination reflected at paragraph [10]. Overall, it seems to me to

have been a reasonable one, and I do not see any proper basis, on this appeal, for me interfering with it.

CERTIFICATE

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This transcript has been approved by the Judge