Neutral Citation Number: [2019] EWHC 707 (Admin)

Case No: CO/112/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2019

Before :

MR JUSTICE MOSTYN

- -

Between :

ABIMBOLA OLATUNJI SAMUEL ADETOYE	**Appellant**
- and -	
THE SOLICITORS REGULATION AUTHORITY	**Respondent**

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- -

Herbert Anyiam (instructed under **Direct Access**) for the **Appellant**
James Ramsden QC (instructed by **Capsticks LLP**) for the **Respondent**

Hearing date: 20 March 2019

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Approved Judgment

Mr Justice Mostyn:

1. On 9 October 2018 the Solicitors Disciplinary Tribunal (SDT) announced certain findings against the appellant; suspended him from practice for two years; and ordered him to pay 12.5% of the SRA's costs with an interim payment on account of £7,184.75. The SDT's written judgment was produced and served on 11 December 2018. The 21 day period in which to file a notice of appeal expired on 2 January 2019, but the notice itself was not filed until 10 January 2019, nine days late. Mr Ramsden QC, for the respondent, argues that permission to file the notice out of time should not be granted.

2. The reason for the delay was that the SDT judgment was diverted into the appellant's spam folder. It did not come to his attention until 24 December 2019. The intervention of the holiday period meant that he could not instruct counsel until after the New Year. Once he did so the notice of appeal was prepared as soon as possible but ended up being filed nine days late.

3. In *Altomart Limited v Salford Estates (No 2) Ltd* [2014] EWCA Civ 1408, [2015] 1 WLR 1825 Moore-Bick LJ at [15] held that an application for permission to appeal out of time is analogous to an application under CPR rule 3.9 and is therefore to be decided in accordance with the same principles. Therefore, I must conduct the three-stage exercise set out in *Denton & Ors v TH White Ltd & Ors* [2014] EWCA Civ 906, [2014] 1 WLR 3926 at [24] where Vos LJ stated:

> "A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application.

4. I do not regard the nine-day delay which accrued over the holiday period as being particularly serious. The reason for the delay was the banal failure of the appellant to check his spam folder. I do not particularly criticise him for that. No injustice is caused to the respondent if I proceed to hear the merits of the appeal. Indeed, Mr Ramsden QC has fully addressed both in writing and orally. Accordingly, I grant the necessary extension of time.

5. Some of the background to this case is found in the decision of the Court of Appeal in *Alpha Rocks Solicitors v Alade* [2015] EWCA Civ 685 [2015] 1 WLR 4534. In that case the Court of Appeal set aside the decision by Mr Kevin Prosser QC to strike out certain claims made by the appellant's firm in proceedings against a former client Mr Benjamin Alade. In his judgment Lord Justice Vos stated:

> "1. This case raises the question of when it is appropriate to strike out a claim on the grounds that the claimant has abused the process of the court. It arises in the context of a claim by a firm of solicitors to recover their costs and expenses from their client

> in circumstances in which the client alleges that the bills were fraudulently exaggerated or misstated.
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> 2. Mr Kevin Prosser QC, sitting as a deputy judge of the Chancery Division, found that two of the bills presented by Alpha Rocks Solicitors, the claimants and appellants (the "solicitors"), to Mr Benjamin Oluwadare Alade, the defendant and respondent (the "client"), were, in the first case, partly false and deliberately exaggerated, and in the second case, brought on the basis of fabricated documents and of a bill of costs that was known to be inaccurate. The judge made these findings on a strike out application brought under CPR Part 3.4(2)(b) and under the inherent jurisdiction of the court, at which no oral evidence was called, on the basis only of written evidence and the documents.
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> 3. The two bills were in respect of separate pieces of litigation in respect of which the solicitors had acted for the client. The first was a claim in the Central London County Court brought against the client by his brother, Mr Rufus Alade, concerning property in London (the "Rufus claim"), and the second was a claim before the Adjudicator to HM Land Registry brought against the client by his wife, Mrs Catherine Alade, concerning registration of the wife's home rights notice against the title to a London property (the "Catherine claim"). The fees in issue in the bills were £131,514.56 in respect of the Rufus claim (the "Rufus fees" and the "Rufus bill"), and £43,732.50 in respect of the Catherine claim (the "Catherine fees" and the "Catherine bill").
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> 4. Mr Prosser struck out the solicitors' claims for the entirety of the Rufus fees and the Catherine fees, though he left in place two other claims for smaller amounts of fees. He acknowledged that the step he was taking was draconian, but held that the abuses which he had identified both involved a serious misuse of the court's procedure, rendered further proceedings thoroughly unsatisfactory, and created a serious risk that a fair trial of the claims would be impossible."

The Court of Appeal reversed that decision, reinstated the claims and sent it for a full trial in the Chancery Division. That took place before Mr Murray Rosen QC who after hearing the evidence seemingly reached much the same conclusions as Mr Prosser QC. I do not know when the trial took place and I have not been given a copy of Mr Rosen QC's judgment. Parts of it are quoted in the judgment of the SDT.

6. The appellant joined the firm on 11 October 2011. He was not merely a partner but was the Compliance Officer for Legal Practice ("COLP"). He left the firm on 14 November 2014. In the aftermath of the judgment of Mr Rosen QC the SRA commenced disciplinary proceedings against four partners of the firm. It is plain that the culpability of the appellant was much less than those of his co-defendants. This is reflected in the sanctions meted out by the tribunal. The other co-defendants were all either struck off, or in the case of the fourth defendant prohibited from applying for restoration to the

Roll of solicitors (he having voluntarily applied to remove his name from the Roll of solicitors).

7. Essentially, the tribunal made a sequence of factual findings against the appellant where his mental state was found to have been reckless. However, critically, in four instances the appellant was found to have acted without integrity.

8. It is not surprising that a fundamental principle of professional conduct for solicitors is that they must act with integrity. This is expressed as Principle No. 2 of the SRA's code of conduct. There has been a certain amount of legal debate about what integrity actually means, and a dispute arose between two schools of thought, one of which, including myself, regarded integrity and honesty as synonyms. The other school regarded the concepts as describing different standards of moral conduct. In *Williams v SRA* [2017] EWHC 1478 (Admin) Sir Brian Leveson P said at [130]:

> "Honesty, i.e. a lack of dishonesty, is a base standard which society requires everyone to meet. Professional standards, however, rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work. There is a real difference between them"

That view was approved by Lord Justice Jackson in *Wingate & Anor v The Solicitors Regulation Authority* [2018] EWCA Civ 366, [2018] 1 WLR 3969 at [100] where he said:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."

9. This being so, it is quite difficult to understand why in a professional misconduct case dishonesty is conduct to which no more obloquy could possibly attach, and, on proof of it, will lead, almost invariably, to the culprit being struck off. If integrity denotes a higher moral standard than honesty, then it must surely follow that want of integrity is baser conduct than common-or-garden dishonesty. But the sanctions they respectively attract do not reflect this hierarchy of turpitude. In the iconic decision of *Bolton v The Law Society* [1994] 1 WLR 512 Sir Thomas Bingham MR stated at 518 B – E:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only

> infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension."

10. Doing the best I can to reconcile these conflicting messages from the higher courts I consider that I have to regard acting without integrity as involving greater moral turpitude than mere dishonesty but that, paradoxically, the former will generally attract a lesser sentence than the latter.

11. For my purposes the starting point where a want of integrity is proved against a solicitor is that he or she will, at the very least, be suspended unless the facts of the case can rightly be described as being very unusual and venial.

12. The first instance of acting without integrity found against the appellant related to three sets of Particulars of Claim against a person described as Client A (who I assume is Mr Benjamin Alade) signed by the appellant and supported by a declaration of truth in each instance. Those Particulars of Claim were respectively for £178,350.20, £15,171 and £43,732.50.

13. At paragraph 42.6 of its judgment the tribunal held:

> "The Particulars of Claim contain a statement of truth and in any event was a document that was being submitted to the court. The third respondent had a duty, before signing the document, to ensure that everything in it was accurate and true. The tribunal had found that the contents had not been accurate or true and it was therefore satisfied beyond reasonable doubt that the third respondent had lacked integrity by signing a Particulars of Claim. In the circumstances adopting the analysis of integrity as set out in Wingate and Evans and Malins, it was clear that the third respondent had failed to discharge his duty to be scrupulously accurate in his dealings with the court. The tribunal found the breach of Principle 2 proved beyond reasonable doubt."

14. The second such instance related to Particulars of Claim signed by the appellant on 11 September 2013 which stated that a certain company was entitled to possession of

certain land when in fact the company had been struck off the Register of Companies. Further, those particulars did not disclose that the occupants of that land had, at one time, a licence to occupy it.

15. At paragraph 43.9 of its judgment the tribunal held:

> "The third respondent was under a duty to ensure that any document that he signed that was to go before the court was completely accurate and could not be misleading. The third respondent had failed in that duty and had relied on information provided to him which was limited, taking it at face value rather than satisfying himself of the accuracy of that information… The tribunal found that the third respondent had lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt"

16. The third such instance was that on or around 27 January 2014 the appellant allowed, or failed to prevent, the withdrawal of deposit funds held in relation to the sale of a property from client account other than as permitted by the Solicitors Accounts Rules.

17. At paragraph 44.4 of its judgment the tribunal noted certain mitigating factors but held:

> "The third respondent had a responsibility to ensure compliance with the SAR by virtue of his role as a partner. In failing to discharge that duty the tribunal was satisfied that he had lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt."

18. The fourth such instance was that in relation to the proceedings against Client A he signed a defence on 29 January 2014, and allowed it to be filed at court, which contained inaccurate statements.

19. At paragraph 45.8 of its judgment the tribunal held:

> "The tribunal had referred already to the third respondent's duty to ensure that any document that went before the court had to be completely accurate and in no way misleading. The third respondent had clearly failed in their (sic) duty by signing this document when it contains clear inaccuracies. The tribunal was satisfied that the third respondent had lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt."

20. When it came to sanction the tribunal noted that there was no motivation on the part of the appellant involving personal gain. The appellant had admitted all the concrete facts although he had disputed the allegation of dishonesty (where he succeeded before the tribunal) as well as the allegation of acting without integrity (which had been found against him). He admitted recklessness.

21. At paragraphs 57.2 – 57.6 the tribunal found:

> "57.2 There had been substantial harm caused. The court had been misled and the third respondent had perpetrated a wrong-

> doing. He should have foreseen the harm that could have been, and was, caused.
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> 57.3 The misconduct was aggravated by the fact that it had been repeated and deliberate although not necessarily calculated. It continued over a period of time and by pursuing the litigation the wrongdoing was concealed. The third respondent ought to have known he was in material breach of his obligations.
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> 57.4 Matters were mitigated by the fact that he had resigned from the firm at a point when he became uncomfortable about how it was being run. He had been told to sign things that he should not have signed and the second respondent had played a role in that. The third respondent had demonstrated some insight which had been reflected in his admissions to many of the allegations. The tribunal took note of the character references provided on behalf of the third respondent.
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> 57.5 The misconduct was too serious for there to be no order or a reprimand. The third respondent had been found to have acted recklessly, to have lacked integrity and to have failed to uphold the proper administration of justice on multiple instances. This made matters too serious for a fine.
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> 57.6 The tribunal considered that the appropriate sanction was a suspension as there was a need to protect the public by immediately removing the third respondent from practice. There was no less a sanction that could achieve this. The tribunal considered that a fixed term of suspension was appropriate. He had been out of his depth, had made admissions and had not been found to be dishonest. It was therefore not necessary that he be struck off or that he receive an indefinite suspension. Taking into account all the factors identified above, the appropriate length of suspension was two years."

22. The appellant's appeal is only against sanction. Mr Anyiam, who has ably presented it both in writing and orally, argues that the tribunal made an error when working its way upwards from the least severe penalty in not explicitly considering the availability of a restriction order. However, I take the view that whilst not explicitly considered this is certainly implicitly reckoned in the first sentence of paragraph 57.6. Moreover, for the reasons I have stated above, I take the view that where want of integrity is proved the starting point should be suspension. A tribunal can work its way downwards from suspension if there are exceptional mitigating factors but suspension is where it should start.

23. Mr Anyiam eloquently argues that when viewed overall the sanction was excessive. It is true that the second, third and fourth instances of want of integrity are of a different scale to the first. Those could probably be described as venial. However, the first was extremely serious. I have to say that the appellant was in this regard lucky not to have been found guilty of dishonesty. I do not regard the fact that the Particulars of Claim had been settled by counsel, or that there was nobody in the office available to sign

them, as affording much, if any, mitigation. Mr Ramsden QC, who is greatly experienced in this field, and who owes an objective duty to the court, has explained that the usual tariff of suspension for an offence of this nature would be 18 months to 2 years.

24. In my judgment the tribunal was plainly right not to depart from the starting point of suspension. The quantum of suspension is a matter quintessentially for the tribunal which cannot be interfered with on appeal unless the exercise of discretion can be shown to have gone completely off the rails. That has not been demonstrated in this case.

25. The appeal is therefore dismissed. The appellant had also mounted an appeal against the award of costs against him made by the tribunal but that was withdrawn after submissions had been concluded but before this judgment was written. I therefore need say nothing about it.

26. That concludes this judgment.