Neutral Citation Number: [2011] EWHC 24 (QB)

Case No: HQ09X02035

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2011

Before :

THE HON. MRS JUSTICE SWIFT DBE

- -

Between :

CARTER-RUCK (A Firm)	**Claimant**
- and -	
SHAHROKH MIRESKANDARI	**Defendant**

- -
- -

Mr William McCormick QC (instructed by **Carter-Ruck Solicitors**) for the **Claimant**
Mr Michael Booth QC (instructed by **Saunders Bearman**) for the **Defendant**

Hearing dates: 22 October 2010

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MRS JUSTICE SWIFT

The Hon. Mrs Justice Swift DBE :

The Action

1. The issues I have to determine relate to a claim for professional fees brought by a firm of solicitors, Carter-Ruck (the claimant), against a former client, Dr Shahrokh Mireskandari (the defendant). On 22 October 2010, I heard argument in relation to:

   i) an application [2010/PTA 0464] by the defendant for permission to appeal (and to do so out of time) against an Order made by Master Leslie on 14 October 2009 (Master Leslie's October Order), granting summary judgment to the claimant; and

   ii) an appeal by the defendant [2009/20697] against an Order of Master Leslie made on 13 November 2009 (Master Leslie's November Order).

2. There was a further application before the court, namely an application [2010/PTA 0319] by the defendant for permission to appeal (and to do so out of time) against an Order made by Master Campbell on 12 May 2010 (Master Campbell's Order). It was agreed by the parties that I should deal with the issues relating to Master Leslie's October and November Orders first. Depending on my decision in relation to those matters, it may or may not be necessary for me to proceed to consider the application for permission to appeal Master Campbell's Order.

The parties

3. The claimant is a well known firm of solicitors, specialising in defamation claims.

4. The defendant is an experienced litigation solicitor who was in practice for many years, most recently as senior partner (effectively the sole equity partner) in a firm of London solicitors, Dean and Dean. In October 2008, the Solicitors Regulation Authority (SRA), the disciplinary and regulatory arm of the Law Society, gave notice of its intention to commence a formal investigation into the financial affairs of the defendant's firm. The defendant sought and obtained an injunction (at first without notice and subsequently with notice) pending an application for judicial review of the SRA's decision to serve the relevant notices. In early November 2008, Pitchford J (as he then was) refused the defendant permission to seek judicial review and set aside the injunction.

5. On 12 December 2008, having received the investigation report, an adjudication panel of the SRA resolved to intervene in the defendant's firm on the grounds of suspected financial dishonesty on the part of the defendant and of suspicions that he had obtained admission as a solicitor by means of false representations. The panel also decided to refer the defendant's conduct to the Solicitors' Disciplinary Tribunal. On 15 December 2008, the resolution to intervene was put into effect. As from that date, the defendant was suspended from practice as a solicitor. On 17 December 2008, further resolutions to intervene were passed in relation to the defendant and one of his two salaried partners, Miss Caroline Turbin, as a result of concerns about their dealings with monies in the firm's client account during the period when the investigation was being conducted.

6. The defendant brought proceedings against the SRA/Law Society seeking withdrawal of the intervention notices and discharge of his suspension. He discontinued those proceedings in July 2009, shortly before the start of the trial. He was subsequently ordered to pay the costs of those proceedings on an indemnity basis. The defendant also commenced proceedings against the SRA/Law Society in the Employment Tribunal, alleging unlawful discrimination against him on the ground of his race and religion. So far as I am aware, those proceedings are still ongoing. Meanwhile, he remains suspended from practice and his hearing before the Solicitors' Disciplinary Tribunal has yet to take place.

The claimant's retainer in the libel claim

7. In September 2008, the defendant instructed the claimant in connection with a claim for libel against Associated Newspapers Ltd. That claim arose out of articles which had appeared in a number of newspapers owned by the company and which contained allegations of dishonesty on the part of the defendant. Between September 2008 and March 2009, the claimant carried out work on the defendant's behalf in connection with the libel claim. The claimant rendered monthly invoices to the defendant for its professional fees and, over the period of the claimant's retainer, the defendant paid a total of over £30,000 to the claimant on account. By March 2009, however, a significant proportion of the fees claimed remained outstanding. As a consequence, on 19 March 2009, the claimant informed the defendant that it was ceasing to act for him and, on 26 March 2009, it made a successful application to the court to come off the record. On 31 March 2009, the claimant sent to the defendant a final bill of costs, setting out the sums which it claimed were due. No further payment was forthcoming from the defendant and none has been made since.

8. On 14 May 2009, after the claimant had threatened to issue proceedings against him, the defendant requested Ms Basha, a partner of the claimant firm, to prepare the file for a detailed assessment.

9. On 14 May 2009, the claimant issued proceedings against the defendant, claiming fees for professional services rendered in the total sum of £118,180.05, together with interest.

10. The defendant filed a Defence dated 15 June 2009, resisting the claim on a number of different bases. He contended that he was not liable to pay the fees claimed because, *inter alia*:

- there had been a conflict of interests between the claimant's representation of the defendant and its representation of another client, a former President of the Law Society;

- the claimant had failed to provide any proper estimate of the likely costs of the libel action;

- the bill of costs had no proper narrative or breakdown of costs and was void since it was inadequate and failed to give a proper summary of the work done in order to enable a proper assessment of the costs to be made. The case of *Kingsley* [1978] 122 Sol Jo 457 was cited in support of this contention;

- the bill of costs was invalid in that it did not comply with section 69(2) of the Solicitors Act 1974 (the 1974 Act);
- the costs claimed were unreasonable and excessive;
- the claimant had refused to give the defendant proper advice on the merits of the libel claim;
- the claimant had not pursued an application to strike out the Defence filed by Associated Newspapers Ltd;
- the claimant had failed properly to plead the defendant's claim for special damages which would, he said, exceed £50 million;
- the claimant had caused unnecessary delay and costs for which the defendant should not have to pay; and
- the claimant "may have been" wholly negligent in its conduct of the defendant's libel claim.

There was no counterclaim.

11. The claimant's response to the Defence was to issue an application for summary judgment. The application was supported by a witness statement dated 13 July 2009 from Ms Basha, which exhibited, *inter alia*, the monthly invoices rendered to the defendant. In her witness statement, Ms Basha set out the history of the claimant's dealings with the defendant. She explained how, in addition to the rendering of monthly invoices to the defendant, she and a fellow partner of the claimant, together with another colleague, had had a number of meetings and discussions with the defendant about the claimant's unpaid fees. She recounted the circumstances leading up to the claimant's application to come off the record.

12. Dealing with the allegations contained in the Defence, Ms Basha said at paragraph 13 of her statement:

> "In the defence the Defendant does not … set out any proper defence for the claim. He does raise a number of issues … These issues, even if accepted by the Court, and for the avoidance of doubt they are denied, would not allow the Defendant to avoid paying my firm at all; at most some of them are points which can be made in the detailed assessment procedure in an effort to reduce the amount he has to pay. It is for that reason that I ask that the Court enter Judgment against the Defendant for a sum to be determined at detailed assessment."

She went on respond to the various matters raised in the Defence which were, as she had indicated, denied. It is unnecessary for me to deal with those responses in any detail.

13. The claimant's application for summary judgment was listed for hearing before a Master on 14 October 2009. In the months leading up to the hearing, the defendant did not file any evidence in support of the matters raised in his Defence and/or in opposition to the claimant's application. Nor, it appears, did he or his solicitors take any steps to instruct counsel to advise him or to represent him at the hearing. The firm of solicitors then instructed by the defendant was J Tehrani, whose proprietor, Mr Jami Tehrani, had, until 2006, been a partner in the defendant's firm of solicitors, Dean and Dean. In December 2008, when under investigation, the defendant had indicated his intention to transfer his interest in Dean and Dean to Mr Tehrani. I do not know whether the transfer was ever effected.

The Freezing Order

14. The defendant did not pay the costs which he had been ordered to pay to the SRA/Law Society as a result of the unsuccessful proceedings against them. Accordingly, on 5 October 2009, the SRA/Law Society applied for and obtained a without notice world-wide Freezing Order against the defendant. The Freezing Order prohibited him from disposing of or dealing with any of his assets up to a maximum value of £500,000. The judge who made the Freezing Order fixed a return date on which the with notice application would be heard. The return date was 12 October 2009, two days before the scheduled hearing of the claimant's application for summary judgment.

Attempts to adjourn the hearing

15. By a letter received by the claimant in the evening of 8 October 2009, the defendant's solicitors informed the claimant of the Freezing Order, and of the return date set for the with notice application. They suggested that, in the circumstances, the hearing of the claimant's application for summary judgment on 14 October 2009 should be adjourned. The claimant responded by letter dated 9 October 2009, asking why the defendant's solicitors considered that an adjournment was necessary. It pointed out that the terms of the Freezing Order would permit the defendant to spend a reasonable sum on legal advice and representation so that it would be open to him to instruct solicitors and counsel to represent him at the hearing. Later the same day, the defendant's solicitors wrote to the claimant, stating that the defendant would have to "follow a process" before spending any money on legal fees and that he was currently "overwhelmed" by the amount of preparation required for the Freezing Order application on 12 October 2009. The claimant refused to agree to an adjournment.

16. As a result, on 12 October 2009, the defendant (acting in person) made an application to Master Eastman to adjourn the hearing listed for 14 October 2009. At the hearing, it was argued that, due to the terms of the Freezing Order, the defendant would be unable to obtain legal representation at the hearing on 14 October 2009. The claimant opposed the adjournment and the Master refused the defendant's application.

17. On 13 October 2009, the defendant's solicitors wrote to Master Leslie (who was to hear the claimant's application on 14 October 2009), explaining that the defendant would not be in a position to instruct leading counsel to represent him at the hearing. Instead, he would be represented by junior counsel who had been instructed recently and was being funded by a third party. The letter indicated that Saunders Bearman (the solicitors representing the defendant in connection with the Freezing Order) had

contacted Russell Cooke (solicitors for the SRA/Law Society) with a view to obtaining their authority for monies to be released to pay leading counsel's fees but had received no response. They requested Master Leslie to grant their renewed application for an adjournment on paper without the necessity of the parties appearing the following day. Master Leslie was not prepared to do this.

The hearing before Master Leslie on 14 October 2009

Further application to adjourn the hearing

18. At the hearing, the defendant was represented by junior counsel, Mr Furlong. He had prepared a detailed skeleton argument as had counsel for the claimant Mr William McCormick (then junior counsel, now Mr McCormick QC). Mr Furlong renewed the defendant's application for an adjournment. He repeated (no doubt on instructions) the assertion made in the defendant's solicitors' letter of the previous day that Russell Cooke had been asked to give authority for the payment of fees to leading counsel but had not responded. Mr Furlong accepted that the defendant's case in the Freezing Order proceedings was that the total value of his assets was far greater than the £500,000 limit of the Freezing Order. Indeed, the defendant was contending that the total equity of four residential properties in central London owned by him exceeded £500,000 and that, since the SRA/Law Society had already obtained final charging orders against those properties, the Freezing Order was unnecessary and should be discharged. Mr Furlong explained that those contentions were not accepted by the SRA/Law Society and the defendant had been ordered to provide evidence that the equity in the four properties exceeded £500,000. If he succeeded in doing that, the Freezing Order would be discharged and he would have access to his assets. However, until that was done, he would be unable to comply with any order requiring him to make a payment to the claimant. Mr Furlong contended that, if the hearing went ahead, the defendant would be prejudiced in two ways: by reason of his inability to instruct leading counsel and because of the possible consequences if he were ordered to make a payment to the claimant. He asked for an adjournment of seven days in order to enable the defendant to deal with these matters.

19. Mr McCormick referred the Master to the copy of a faxed letter which had been dispatched by Saunders Bearman to Russell Cooke at 13.46 hours on 13 October 2009, requesting authority to pay legal fees for counsel to attend the hearing on 14 October 2009. He said that the request had been made too late. It could and should have been made much earlier. He pointed out that, in any event, the letter contained no reference to the defendant's wish to instruct leading counsel. He referred to Russell Cooke's faxed response to Saunders Bearman, sent at 15.27 hours, in which they expressed surprise that the issue of legal representation had not been raised at the Freezing Order hearing the previous day, but agreed to permit the defendant to pay for legal representation for the hearing on 14 October 2009. He pointed out that the letter of 13 October 2009, written by J Tehrani (the solicitors acting for the defendant in connection with the claim for solicitors' fees), had been faxed to the Master at 16.35 hours, over an hour after Russell Cooke had faxed their positive response to Saunders Bearman, yet the letter suggested that there had been no response to the request. Mr McCormick suggested that the defendant was using his alleged inability to obtain legal representation as a device to obtain an adjournment of the claimant's application for summary judgment.

20. Mr Furlong denied that J Tehrani had ever received or been informed of Russell Cooke's positive response to Saunders Bearman. He emphasised that the defendant wanted to be represented by leading counsel at the hearing of the claimant's application. He himself had been instructed only recently and had no prior knowledge of the case**.**

21. The Master refused the application for an adjournment. In giving his reasons, he referred to the defendant's failure over several months to make any preparations for the hearing by filing evidence or obtaining legal representation. He said that, as an experienced litigator, the defendant well knew what was required. Until the Freezing Order was made, his assets were available to him to be used to take all necessary steps. Instead, the defendant had chosen to do nothing until a very late stage. The fact that leading counsel had not been instructed - and junior counsel had been instructed only at the last minute - was entirely the defendant's own fault.

The substantive hearing

22. Master Leslie then proceeded to deal with the claimant's application for summary judgment.

23. Mr McCormick submitted that the contentions made in the Defence were without basis and were unsupported by any evidence from the defendant. He reminded the Master that the defendant was an experienced litigation solicitor who would have been well aware (even if those acting for him were not) of the proper procedures and, in particular, the need to file evidence dealing with his defence to the claimant's claim and with Ms Basha's witness statement. The fact that he had not filed evidence in support of the contentions set out in his Defence strongly suggested that there was no substance in those contentions. He observed that the defendant's assertion in his Defence that his special damages claim was worth £50 million illustrated the fact that his contentions were completely unrealistic.

24. Mr Furlong made submissions about the situation of conflict which the defendant claimed had arisen as a result of the claimant representing both the defendant (who was involved in an ongoing dispute with the SRA/Law Society) and a former President of the Law Society. He also relied on the defendant's contentions that, because the bill of costs contained no Narrative or breakdown of costs, it was void and, further, that the bill was invalid because it did not comply with section 69(2)(a) of the 1974 Act. He referred also to the alleged failure by the claimant to provide costs information to the defendant from the outset of its retainer. Finally, he suggested that the retainer agreement should be set aside by reason of the poor quality and lack of advice given to the defendant. He argued that all these matters gave rise to an arguable defence to the claim.

25. In reply, Mr McCormick argued that the requirements of section 69(2)(a) of the 1974 Act (i.e. that the bill must be signed by a solicitor and enclosed with a letter signed by the solicitor) had been met and Ms Basha's witness statement contained evidence to that effect. He said that the claimant did not understand in what way it was suggested that the bill did not comply with section 69(2)(a). As to the allegation that the bill of costs contained insufficient detail, Mr McCormick said that it was a gross sum bill. The 1974 Act provided that, if a client wanted a detailed bill and/or a detailed assessment of the bill, he had a right (if the request was made within the requisite

period) to have the same. The defendant, who knew the rules, had not done so. Mr McCormick submitted that there was nothing in any of the points raised by the defendant in his Defence.

Master Leslie's judgment of 14 October 2009

26. Giving judgment, Master Leslie rejected the various complaints made by the defendant in his Defence. He rejected the suggestion that the claimant's conduct had been such as might justify a finding that the contract of retainer should be declared void and/or set aside. He referred to the absence of any counterclaim. He found that there was no evidence of any conflict of interest on the part of the claimant. He rejected the contention that the defendant, a solicitor with considerable litigation experience, could realistically claim to have been misled or inadequately advised about the likely costs of his libel action. He found that there was no evidence of any breach of section 69(2)(a) of the 1974 Act. As to the suggestion that the bill of cost and the earlier invoices had not been adequately particularised, the Master said:

> "Well, they are. They are gross sum bills. They are not supposed to be or required to be for the purposes of assessment. If it goes for taxation then that is another matter."

27. The Master went on to express surprise at the defendant's complaint that the claimant had not properly advised him about the prospects of his libel action. He concluded that there was no prospect of this defence succeeding. He referred to Ms Basha's evidence that the defendant had persistently refused to produce evidence of the losses he claimed to have incurred as a result of the alleged libel. She said that, since that evidence was not forthcoming, it had not been possible to advise him on the special damages claim. Master Leslie observed that the claimant had been right to adopt that approach since extravagant claims unsupported by evidence could serve to undermine the rest of a claimant's case. In any event, he said, the defendant could still amend his statement of case to include an increased claim for special damages, if the necessary evidence was available.

28. Master Leslie continued at paragraph 22:

> "The one final thing that, in my judgment, finalises the matter and puts it beyond any doubt whatsoever is the delay. Had [the defendant] a defence with any prospect of success, it would have been advanced with enthusiasm and conviction very much earlier in the life of this application. He had the means then to do so with advice but chose not to. That undermines such conviction as there may be in the veracity of his own defence."

29. He granted the claimant's application for summary judgment.

Master Leslie's October Order

30. Before the hearing, the claimant had indicated that, although the defendant was not by that time entitled as of right to a detailed assessment of the claimant's bill of costs (not having made any request for an assessment within the requisite period), the claimant was nevertheless prepared to agree to an Order providing for a detailed

assessment on terms that the defendant should make a payment of £60,000 (i.e. just over 50% of the fees claimed) on account.

31. Master Leslie ordered that there should be a detailed assessment of the claimant's bill. He rejected the suggestion that the defendant should pay as much as £60,000 on account. Instead, he concluded that the defendant should pay £40,000. He ordered that, if the defendant failed to pay that sum by 4pm. on 13 November 2009 (i.e. just over four weeks hence), there would be judgment for the claimant in the whole amount of the fees claimed, together with interest and costs to be assessed.

32. Master Leslie recognised that it was possible that, because of the existence of the Freezing Order and through no fault of his own, the defendant may have difficulty in making the payment on account in time. In order to provide for that possibility, Master Leslie gave the defendant permission to apply to vary the amount of, and/or the time for, making, the payment. His Order provided that any such application must be issued and served with supporting evidence by 4pm on 4 November 2009 and would be heard by him at 11am on 13 November 2009.

33. Master Leslie further ordered that the defendant should pay the claimant's costs of the claim and of the application for summary judgment, such costs to be assessed at the same time as the detailed assessment of the claimant's fees, or otherwise as directed by the Senior Courts Costs Office.

After the hearing

34. The defendant did not appeal any part of Master Leslie's October Order. Nor did he make any payment to the claimant within the time specified in that Order.

35. On 4 November 2009, the defendant issued an application, seeking an order to vary the time for and the amount of the payment on account ordered by Master Leslie. The application was accompanied by a witness statement dated 4 November 2009, in which the defendant stated that the Freezing Order was still in place, as a result of which he was unable to pay the sum of £40,000. He indicated that, at a hearing listed for 30 November 2009, he would be seeking to set aside the Freezing Order. He stated that he was prepared to offer an undertaking to the claimant to make arrangements to pay the £40,000 in instalments "after the conclusion of the Freezing Order matter". In accordance with Master Leslie's October Order, the defendant's application was listed for hearing on 13 November 2009.

36. In his witness statement, the defendant also complained about submissions made by Mr McCormick at the hearing before Master Leslie on 14 October 2009. He alleged that the instructions Mr McCormick had been given by Ms Basha had been in contempt of a previous Order of the court. On 12 November 2009, the defendant made a further witness statement, in which he submitted that the Master should refer the case to a High Court judge for a contempt hearing against Ms Basha and that the hearing of his application should be adjourned – and the claimant's claim stayed – until the contempt proceedings had been determined. The defendant faxed a copy of that witness statement, together with a letter seeking the adjournment, to the court on 12 November 2009, the day before the hearing was due to take place. That letter was placed before Master Leslie the following day.

The hearing before Master Leslie on 13 November 2009

The alleged contempt

37. At the hearing on 13 November 2009, the defendant represented himself. Mr McCormick represented the claimant. The Master refused to take any action in relation to the alleged contempt and/or to adjourn the hearing. He proceeded to hear the substantive application.

The substantive hearing

38. The defendant told Master Leslie that the SRA/Law Society still refused to accept his assertion that the equity in his four properties exceeded £500,000. They were currently having the properties valued. Consequently, he said, he remained unable to gain access to any of his assets. His bank accounts were frozen and, in any event, they were all in overdraft. He had no money with which to make the payment.

39. The defendant told Master Leslie that he had not appealed his Order of 14 October 2009. He said that he respected the Order and was not seeking to run away from his obligations. He said that all he was asking for was time to pay.

40. For the claimant, Mr McCormick said that the defendant had failed to inform the claimant whether it was his case that he could not afford to make the payment of £40,000 which had been ordered by Master Leslie on 14 October 2009. The defendant claimed to have provided a statement of assets for the purposes of the Freezing Order proceedings but the claimant had not seen a copy of that statement. The defendant had not provided evidence stating whether or not his total assets were worth more than the £500,000 limit of the Freezing Order. Mr McCormick submitted that, if the defendant were to succeed in persuading the court that he should have an extension of time in which to make the payment, he would have had to set out his position clearly and unequivocally in a witness statement verified by a statement of truth. He had failed to do that, despite the fact that the claimant had pointed out the omission on receipt of his witness statement dated 4 November 2009.

Master Leslie's judgment of 13 November 2009

41. In giving judgment, Master Leslie remarked on the lack of any evidence to support the defendant's assertions. He said that, if an extension of time were to be granted, the court would need evidence about the value of the defendant's assets and about any attempt which he had made to persuade the SRA/Law Society to release funds to enable him to make the payment. However, such evidence was not forthcoming. He concluded:

> "There is simply not enough evidence before me to show that there is any real prospect of [the defendant] dealing with this in a satisfactory way."

Consequently, he refused the defendant's application.

The effect of the judgment

42. The defendant did not pay the £40,000 to the claimant by 4pm on 13 November 2009 and he therefore became liable to pay the full amount of the fees claimed by the claimant.

The application for permission to appeal Master Leslie's November Order

43. On 2 December 2009, the defendant filed an Appellant's Notice, seeking permission to appeal against Master Leslie's November Order. On 23 April 2010, permission to appeal that Order was refused on paper by a High Court judge.

44. On 21 July 2010, the defendant renewed his application for permission to appeal Master Leslie's November Order at an oral hearing before Stadlen J. In the course of argument, the judge suggested that the defendant's complaint was in reality directed at Master Leslie's October – rather than his November – Order. However, he granted the defendant permission to appeal Master Leslie's November Order (not, he said, without some misgivings) and ordered a stay of execution pending determination of the appeal.

45. On 5 August 2010, the claimant filed a Respondent's Notice in respect of the appeal against Master Leslie's November Order. The Respondent's Notice submitted that, in addition to the grounds given in Master Leslie's judgment of 13 November 2009, the Order should also be upheld on the ground that the defendant had failed to place before the court sufficiently cogent evidence of his inability (as opposed to his unwillingness) to make the payment of £40,000 by any means possible, including from his bank accounts, any business assets and/or by borrowing money from friends and family.

The application for permission to appeal Master Leslie's October Order

46. On 10 August 2010, the defendant filed an Appellant's Notice, seeking permission to appeal Master Leslie's October Order and for an extension of time in which to do so. The Appellant's Notice was issued just over nine months after the expiration of the time for appealing under the CPR. It seems probable that the Appellant's Notice was issued as a direct result of the observations made by Stadlen J at the hearing on 21 July 2010.

Other relevant events

47. On 26 November 2009, pursuant to Master Leslie's October and November Orders, the claimant began the procedure for obtaining a detailed assessment of the costs of the claim and of the costs of the two hearings before Master Leslie. The detailed assessment had been concluded by Master Campbell by 1 April 2010. He assessed the claimant's costs in the sum of £32,587 and the costs of the assessment in the sum of £5,900. The defendant did not comply with the order to pay those costs.

48. Meanwhile, I was told that the Freezing Order remains in operation. In a witness statement made on 13 October 2010, the defendant said that he was "in the process of applying to set aside the Freezing Order".

49. At the time of the hearing before me, I was told that the defendant's libel claim had been struck out for failure to give proper disclosure. The defendant had apparently obtained permission to appeal that decision on a renewed application at an oral hearing.

The relevant provisions of the Solicitors Act 1974

50. The relevant provisions of the 1974 Act (as amended) are sections 64, 69 and 70. Section 64(1) provides that, where the remuneration of a solicitor in respect of contentious business done by him is not the subject of a contentious business agreement, the solicitor's bill of costs may at the option of the solicitor be either a bill containing detailed items or a gross sum bill. Section 64(2) provides that, in the event that the solicitor elects to provide a gross sum bill, the client may at any time before he is served with a writ or other originating process for the recovery of costs included in the bill and before the expiration of three months from the date on which the bill was delivered to him, require the solicitor to deliver, in lieu of the gross sum bill, a bill containing detailed items. Section 64(3) states that, where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable with the bill before the expiration of one month from the service on that party of the writ or other originating process, order that the bill be assessed .

51. Section 69 sets out the requirements for a bill of costs. I do not need to rehearse those requirements in detail. Section 69(2E) provides that, where a bill is proved to have been delivered in compliance with those requirements, it is to be presumed, until the contrary is shown, to be a bill *bona fide* complying with the 1974 Act.

52. Section 70 provides:

> "(1) Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment is completed.
>
> (2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—
>
> (a) that the bill be assessed ; and
>
> (b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.
>
> (3) Where an application under subsection (2) is made by the party chargeable with the bill—

> (a) after the expiration of 12 months from the delivery of the bill, or
>
> (b) after a judgment has been obtained for the recovery of the costs covered by the bill, or
>
> (c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill.
>
> no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the assessment as the court may think fit."

53. Thus a solicitors' client has the right to demand a detailed bill of costs from his solicitor within three months of the delivery of a gross sum bill, together with a right to a detailed assessment within a month of the commencement of an action on the bill. Thereafter he can apply to the court for a detailed assessment although, once judgment has been obtained for the recovery of the costs covered by the bill, the court will order a detailed assessment only in special circumstances.

The issues to be determined

54. I shall deal first with the issues relating to Master Leslie's October Order. These are:

   i) the application for an extension of time

   ii) (if appropriate) the application for permission to appeal

   iii) (if appropriate) the substantive appeal.

The application for an extension of time

The defendant's contentions

55. Mr Michael Booth QC, who represented the defendant before me, submitted that the failure to file an Appellant's Notice in time had not been intentional but had been founded on the defendant's mistaken belief that Master Leslie's decision had been correct. He said that, at the time, the defendant had been focussing on obtaining the extension of time to make the payment ordered by Master Leslie. He had had problems with his legal representation and, with hindsight, had taken the wrong course.

56. Mr Booth submitted that court's overriding duty under the CPR to deal with cases justly demanded that the extension of time should be granted. The merits of the defendant's appeal against Master Leslie's October Order were strong and, if he were denied the opportunity to pursue that appeal, he would be severely prejudiced. The defendant's contention was that the claimant's bill of costs (together with the previous invoices) was void. If he were permitted to contest the case and that contention succeeded, he would not be liable to pay anything to the claimant. If the extension were not granted, however, he would have to pay all the fees claimed by the claimant. Mr Booth argued that, by contrast, the claimant would suffer no prejudice if the extension of time was granted.

57. Mr Booth accepted that it was important that there should be finality in litigation. However, he argued that there had been no finality in this case because of the appeal against Master Leslie's November Order. That appeal had, he said, raised most of the same issues as would be relevant in the appeal against Master Leslie's October Order. In order to deal with it properly, it was necessary for me to be able to look at the whole picture.

58. For the claimant, Mr McCormick observed that the defendant had filed no evidence explaining the reasons for his delay in appealing Master Leslie's October Order. It was now being contended on the defendant's behalf that the subject matter of Master Leslie's October and November Orders was interlinked so that it would be wrong to hear an appeal against one Order without hearing the appeal against the other. Yet the defendant had given no explanation as to why he had not appealed Master Leslie's October Order immediately after it was made. Mr McCormick suggested that, in truth, the reason was that the defendant had been well aware that there was no merit in any of the points raised in his Defence, including those points which were now being raised on his behalf.

59. Mr McCormick referred to the case of *Sayers v Clark Walker (a firm)* [2002]1 WLR 3095 which made clear that, in considering an application for an extension of time, the court must apply the checklist set out in CPR3.9. He said that, if that was done, the defendant's application for an extension of time must inevitably fail.

Discussion and conclusions

60. In considering this application, I have had in mind the overriding objective and, in particular, CPR 3.9, which sets out the approach that the court should adopt when considering an application for relief from any sanctions imposed for a failure to comply with any rule, practice direction, or court order. Rule 3.9 provides that the court will consider all the circumstances including:

> "(a) the interests of the administration of justice;
>
> (b) whether the application for relief has been made promptly;
>
> (c) whether the failure to comply was intentional;
>
> (d) whether there is a good explanation for the failure;
>
> (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol;
>
> (f) whether the failure to comply was caused by the party or his legal representatives;
>
> (g) whether the trial date or the likely date can still be met if relief is granted;
>
> (h) the effect which the failure to comply had on each party; and

(i) the effect on which the granting of relief would have on each party."

61. With regard to CPR 3.9(a), there can be little doubt that the interests of the administration of justice are served by there being certainty and finality to litigation. A successful party in a claim for damages or debt is in general entitled to assume, once the time for appeal has expired, that he will get his money or, if it is not paid, that he will be able to enforce the judgment. The re-opening of cases at a late stage is wasteful of the resources of the parties and of the court.

62. As a result of Master Leslie's October Order, the claimant obtained summary judgment in the claim. If the appeal were to be permitted to proceed and were to succeed, the effect would be that the issue of "liability" would be put in issue once again, more than a year after the claimant and the court - as well as the defendant (or so it seemed) - had regarded it as finally resolved.

63. In addition, further court proceedings consequential on the granting of summary judgment have taken place. A detailed assessment of the claimant's costs of the action and of the two hearings before Master Leslie was conducted by Master Campbell. If the appeal were permitted to proceed and were to succeed, Master Leslie's October Order (including its provisions for costs) would no longer stand and the assessment of costs undertaken by Master Campbell would have been a waste of time and resources. Mr Booth argued that the claimant had sought the assessment of its costs of the claim at its own risk since it was aware that an appeal against Master Leslie's November Order was pending. He said that the claimant should have awaited the outcome of the appeal before proceeding with the assessment.

64. I cannot accept Mr Booth's contention on this point. As a result of Master Leslie's October Order, the issue of "liability" had been disposed of. There had been no appeal against that Order. In those circumstances, the claimant was plainly entitled to proceed with the assessment of the costs of the action and of the hearing on 14 October 2009. In the event, the assessment also dealt with the costs of the hearing on 13 November 2009 which were the subject of an ongoing appeal. At the time the detailed assessment was conducted in May 2010, permission to appeal that Order had been refused on paper and the renewed application had not yet been determined. There must have been considerable doubt as to whether that application would succeed. There had still been no appeal against Master Leslie's October Order. There would have been considerable advantages in dealing with the costs of both the hearings before Master Leslie at the same time. There was a risk that the assessment in relation to the hearing in November 2009 might be wasted (if the defendant's application for permission to appeal was granted and the appeal succeeded). However, the bulk of the assessment related to the costs of the action and the earlier hearing. I can well see why the advantages of proceeding with the assessment of costs in respect of the November 2009 hearing were thought to outweigh the possible disadvantages.

65. As to CPR 3.9(b), it cannot be said that the defendant's application for relief was made promptly. His Appellant's Notice was issued more than nine months out of time. Even if it had not been issued within the time limit, he could have reconsidered his decision not to appeal Master Leslie's October Order after the hearing before Master Leslie on 13 November 2009 or at any time between then and August 2010. However, he did not do so. Even after the hearing before Stadlen J (at which Mr

Booth represented him), the defendant did not move quickly to seek permission to appeal Master Leslie's October Order. Instead, he waited a period of almost three weeks before filing his Appellant's Notice.

66. With regard to CPR 3.9(c), I do not consider that there was any intentional failure to comply with the time limit for appealing, in the sense that the defendant had always intended to appeal but had decided, for some tactical reason, to do so out of time. However, I am satisfied that the defendant took a considered decision not to appeal Master Leslie's October Order. He was represented by both solicitors and counsel at the hearing before Master Leslie on 14 October 2009. They should have been in a position to advise him about the prospects of an appeal against the Order made on that date.

67. Moreover, even though there seem to have been problems (as to the nature of which there is no evidence) with the defendant's legal representation after the hearing of 14 October 2009, those problems would not have prevented him from using his own knowledge and expertise to make a decision whether or not to appeal Master Leslie's October Order. The defendant is a qualified solicitor with considerable experience in the field of civil litigation and, no doubt, with a good knowledge of the rules about costs. It is clear from what he said to Master Leslie at the hearing on 13 November 2009 that he had given active consideration to the possibility of an appeal and had decided against it. If he were a layman, it might be successfully argued that he did not have the knowledge necessary to make an informed decision. That cannot be said in the case of this defendant. In any event, the terms of the Freezing Order would have permitted him to incur reasonable expenses for the purpose of legal representation. Thus, if he had believed that he needed further expert legal advice as to whether to appeal, he could have obtained it.

68. As to CPR 3.9(d), the defendant has not provided any satisfactory evidence of the reason for his decision not to appeal and for his later change of heart. In his witness statement of 18 October 2010, he purported to explain the reasons for his delay. He asserted that the validity of Master Leslie's October Order had been "under challenge" since his application to vary its terms made on 4 November 2009. That assertion is plainly wrong and is in any event completely at odds with his own assertion at the hearing on 13 November 2009 that he respected Master Leslie's October Order and his obligations under it. The defendant also claimed that the failure to lodge his appeal in time was caused by the distress he was suffering and the pressure imposed upon him by the litigation in which he was involved. This explanation is wholly unconvincing, having regard to the fact that he managed to appeal Master Leslie's November Order within time. It is also to be noted that, between the two hearings before Master Leslie, the defendant was expending a considerable amount of effort in pursuing what he believed to have been an incident of contempt committed by the a solicitor within the claimant firm. If he had thought it appropriate to appeal Master Leslie's October Order, I have no doubt that he would have done so.

69. With regard to CPR 3.9(e), there have been delays and defects in the defendant's prosecution of the appeals. More significant, however, in my view is his general conduct of the litigation, in particular his failure to provide proper evidence to support his various contentions. I take that matter into account when considering the overall circumstances of the case.

70. As to CPR 3.9(f), it seems to me, on the basis of the information available to me, that the defendant's failure to comply with the time limit for appealing was of his own making. As I have observed at paragraph 67 above, he had the expertise necessary to make the decision and, if he considered that he did not, he could have obtained the relevant advice. As it is, he took a conscious decision not to appeal Master Leslie's October Order.

71. CPR 3.9(g) is relevant only in the sense that, if the extension of time were granted and the appeal were to succeed, the issue of "liability" would be re-opened and the parties would, in effect, be in the same position that they were in May 2009, after service of the Defence. Thus, the resolution of the claim would be considerably later than would otherwise be the case.

72. As to CPR 3.9(h), as a result of the defendant's delay in taking steps to appeal Master Leslie's October Order, the claimant proceeded with the assessment of the costs of the claim. In addition, since the defendant failed to pay the judgment debt and interest, the claimant commenced bankruptcy proceedings against him. Those steps would not have been taken – and the expense thereof would not have been incurred – if the defendant had complied with the time limit for appealing the October Order.

73. With regard to CPR 3.9(i), I have already observed that, if the extension of time were granted and the appeal were to proceed, the claimant would lose the benefit of the summary judgment against the defendant and would be returned to the same position as it was on receipt of the Defence in May 2009. The claimant would inevitably face further delay before its claim was finally resolved. On the other hand, if the defendant were granted the relief he seeks, it would be open to him to defend the claimant's claim and, if his contentions were accepted, to avoid payment of the entirety of the claimant's bill of costs. If the relief is not granted, he will remain liable to pay the full amount of the bill of costs which is likely to be more than he would have been required to pay had a detailed assessment of the costs taken place.

74. The delay in this case is very lengthy and is made more significant by the fact that, in reliance on the finality of Master Leslie's October Order, an assessment of the costs of the claim has been conducted and bankruptcy proceedings have been commenced. There is no doubt that the claimant will suffer considerable prejudice if the defendant's application for an extension of time is granted. I accept that the defendant may suffer prejudice if his application is unsuccessful. However, he has not assisted the strength of his own case by his complete failure to provide any evidence to explain the delay which has occurred. As an experienced solicitor, the defendant must be aware – and will no doubt have been advised by those who have represented him at various stages of this litigation – that, if a party is seeking the indulgence of the court, it is encumbent on him to provide proper evidence to support his case. The defendant has signally failed to do this. Indeed, his failure to provide evidence to support the contentions made on his behalf has been a persistent and unattractive feature of this litigation.

75. In all the circumstances, I am satisfied that the arguments against extending time in this case far outweigh those in favour of doing so and that the interests of justice would not be served by granting the defendant's application. If the arguments had been more evenly balanced, it would have been necessary for me to evaluate the

merits of the defendant's case. It will be clear from what follows that, if I had undertaken that exercise, I should have still refused the application to extend time.

The application for permission to appeal Master Leslie's October Order

76. For the sake of completeness, and despite my conclusion in relation to the application for an extension of time, I shall briefly consider the merits of the defendant's application for permission to appeal Master Leslie's October Order.

77. Two grounds of appeal were advanced on behalf of the defendant. First, it was said that Master Leslie erred in finding that the defendant had no reasonable prospect of successfully resisting the claim on the ground that the bill of costs was void and could not form the basis of a claim. Second, it was argued that it had been clear at the hearing that the defendant would be unable to make any payment ordered and that Master Leslie should not therefore have made an order that he should pay £40,000 and that failure to pay should trigger judgment for the full amount of the claimant's bill. No complaint was made about Master Leslie's rejection of the many other issues raised in the defendant's Defence. Presumably, it was recognised – as was plainly the case – that those issues were unmeritorious and/or incapable of constituting a valid defence to the claim.

78. At the hearing before me, Mr Booth was very critical of Ms Basha's witness statement of 13 July 2009 and, in particular, of her assertion that none of the matters raised in the Defence, even if proved, would amount to a defence to the claim. He suggested that, as a result of that assertion, Master Leslie had been led into error. He had not properly considered the defendant's contention that it was arguable that the bill of costs contained inadequate information and was therefore void. Mr Booth said that, if Master Leslie had done so, he must inevitably have concluded that the defendant had a reasonable prospect of successfully defending the claim on that basis.

79. In fact, it is clear that Master Leslie did consider the issue. It was raised during the hearing by the defendant's counsel, Mr Furlong. Master Leslie dealt with the issue (albeit briefly) in his judgment: see paragraph 26 above. He plainly considered that there was no merit in it.

80. At the hearing before Master Leslie on 14 October 2009, Mr Furlong referred to the case of *Kingsley* which had been cited in the Defence as authority for the proposition that a bill stating merely "for professional services" is inadequate and void. Mr Furlong relied on the case of *Kingsley*, as did Mr Booth at the hearing before me. In fact, although *Kingsley* is cited as authority for the proposition in at least two well known textbooks on costs, the report of the case in the Solicitors Journal does not support that assertion.

81. The leading case in this area of law (which was not referred to at the hearing before Master Leslie) is *Garry v Gwillim* [2002] 1 WLR 3095. Giving the leading judgment in that case, Ward LJ indicated, at paragraph 63, that he accepted the principle expressed in the judgment of Lord Campbell CJ in *Cook v Gillard* (1852) 1 E. & B.26 that:

> "The defendant who undertakes to prove that the bill is not a bona fide compliance with the Act [then the Solicitors Act

> 1843] cannot found an objection upon want of information in the bill if it appears that he is already in possession of that information, [and]
>
> A client has no ground of objection to a bill who is in possession of all the information that can be reasonably wanted for the consulting on taxation".

82. Ward LJ went on at paragraph 64:

> "Thus I would accept the proper principle to be that there must be *something* in the written bill to indicate the ambit of the work but that inadequacies of description of the work done may be redressed by accompanying documents … or by other information already in the possession of the client. That, it seems to me, would serve the purpose of the Act [the Solicitors Act 1974] to give the client the knowledge he reasonably needs in order to decide whether to insist on taxation. If the solicitor satisfies that then the bill is one bone fide complying with the Act".

83. At paragraph 62 he observed:

> "I see no reason not to accept the [qualification] … that the knowledge of the client is a material factor. Why should it not be so? Assume a client who perfectly well knows everything he needs to know about the work done and about his right to tax the bill and his prospects of success on that taxation (or to make the facts even more stark, assume he knows he has no prospects of reducing the bill on taxation). It would be extraordinary if he could ambush his former solicitor and evade his debt, perhaps only temporarily, by claiming a defect in the bill. There are ample dicta in those earlier authorities where the courts set its face against such disreputable conduct. The purpose of the legislation is to protect the innocent or ignorant client, not to give the unscrupulous a wholly unmeritorious advantage over his solicitor".

84. In his conclusions he stated:

> "70. This review of the legislation and the case law leads me to conclude that the burden on the client … to establish that a bill for a gross sum in contentious business will not be a bill "bona fide complying with the Act" is satisfied if the client shows:—
>
> i) that there is no sufficient narrative in the bill to identify what it is he is being charged for, and
>
> ii) that he does not have sufficient knowledge from other documents in his possession or from what he has been told

> reasonably to take advice whether or not to apply for that bill to be taxed.
>
> The sufficiency of the narrative and the sufficiency of his knowledge will vary from case to case, and the more he knows, the less the bill may need to spell it out for him. The interests of justice require that the balance be struck between protection of the client's right to seek taxation and of the solicitor's right to recover not being defeated by opportunistic resort to technicality. ”

85. It is clear, therefore, that it is necessary to look at all the information available to the defendant when assessing the adequacy of the bill of costs and the invoices that had been rendered previously. Prior to the hearing before Master Leslie, the defendant had filed no evidence about the extent of his knowledge of the basis for the costs being claimed. Indeed, save for the Defence, Master Leslie had no material from the defendant at all.

86. The witness statement of Ms Basha which was before Master Leslie at the hearing on 14 October 2009, made clear that the defendant had received the claimant’s document, “Information for clients”, which set out the hourly rates for various levels of fee earners employed by the claimant. The bill of costs (and the invoices previously issued) did not contain details of the work done by the claimant. They described the costs claimed as “professional charges”. They identified that the relevant charges had been incurred in connection with the defendant’s claim against Associated Newspapers Ltd. They specified the period of time (in the case of the bill) or the month (in the case of the invoices) to which the charges related. They gave brief details of the disbursements which had been incurred. Of itself, the information within the bill and invoices was sparse, although it was in my view sufficient to constitute the “*something*” referred to by Ward LJ in *Gwillim.* If the information in the bill and invoices had been the only information available to the defendant, it would plainly have been insufficient to fulfil the requirements of the 1974 Act.

87. However, that was not the position. There was a considerable amount of other information available to the defendant. He was an experienced solicitor with knowledge of the costs regime. In addition, he would plainly have a good understanding of the nature of the work being done on his behalf and of the time likely to be taken for the various tasks undertaken. He was well able to query the bill and would have been entirely familiar with his entitlement to seek a detailed bill and a detailed assessment. The fact that he did not seek to exercise his rights in these respects (or not until he was facing the commencement of proceedings against him) strongly suggests that he had all the information that he needed. There was no evidence before Master Leslie that the defendant did not know the basis of the fees charged or that he asked for any clarification of them. The only evidence before Master Leslie was that of Ms Basha who described various meetings between herself and colleagues and the defendant at which the issue of costs had been discussed.

88. There was little argument about these matters before Master Leslie and, in those circumstances, it is difficult to see how his conclusion that the defendant had no reasonable prospect of defending the claim on the basis that the bill was void could be criticised. However, even if the matter had been fully argued, as it was before me, I do

not consider that the position would have been any different. Master Leslie would have been fully entitled to conclude that the defendant had not satisfied the test approved in *Gwillim* and that the argument that the bill of costs was void constituted a wholly unmeritorious attempt to avoid payment of the claimant's fees.

89. The fact that a wealth of further information was in fact available to the defendant is confirmed by evidence which was not before Master Leslie but has since been provided in a further witness statement from Ms Basha dated 13 October 2010. She described how a Narrative setting out details of the invoices covering the period from 10 September 2008 (the date when the claimant was first instructed) to the 28 November 2008 was sent to the defendant on several occasions. Although, in correspondence, it was contended that the defendant had not received the Narrative, it is quite plain from the documents produced by Ms Basha that he did receive and acknowledge it and he now accepts that fact. It is clear from the evidence of Ms Basha – and from the defendant's further witness statement dated 13 October 2010 – that he studied the information provided to him with some care. He raised an objection to a photocopying charge of £3 which the claimant agreed to waive. He asked for the VAT rate originally charged to be reduced and this was done. Even when his non-payment of fees was discussed, he raised no objections to, or queries about, the bill or invoices. His stance was always that he could and would pay the bills when he had the funds to do so. He claimed to have assets worth several million pounds but said that he could not pay immediately because of a short term cash flow problem.

90. The Narrative covered only the period up to the end of November 2008. No Narrative was rendered to the defendant for the period from December 2009 to March 2009 until after these proceedings had been commenced. However, Ms Basha stated (and the later Narrative confirms) that much of the work done on the libel claim in the period from December 2008 to March 2009 was performed at the defendant's specific request. She said that he was at all times in regular contact with the claimant and was fully aware of the work being carried out on his behalf.

91. All this evidence serves only to reinforce my view that Master Leslie was fully entitled – indeed correct – to conclude that the defendant had no reasonable prospect of successfully defending the claim. Furthermore, his assessment that the defendant had no real conviction in the veracity of his defence to the claim was to some extent confirmed by the defendant's declaration at the hearing on 13 November 2009 that he respected the Master Leslie's decision and had not appealed it.

92. Having failed to make an application for a detailed assessment before judgment, the defendant was not entitled as of right to a detailed assessment of the claimant's fees. Such an assessment would be ordered only in special circumstances. Nevertheless, the claimant accepted that there should be a detailed assessment of its costs provided that the defendant made a payment on account. Master Leslie made an order for detailed assessment of the claimant's fees. The claimant wanted a payment on account which was equivalent to approximately half the fees claimed. In the event, Master Leslie awarded a payment on account of approximately a third of the fees claimed, thus guarding against the possibility that the fees might be significantly reduced on detailed assessment.

93. Mr Booth contended before me that there was no basis on which Master Leslie could determine whether the amount that the defendant was ordered to pay constituted a reasonable proportion of the likely amount of the final judgment, as the court is required to do when considering making an interim payment under the provisions of CPR 25. He contended that there was no material on which to assess the value of the claim. The defendant was alleging that the claimant's fees were grossly excessive. In those circumstances, he said, it was wrong to order an interim payment.

94. I do not accept that contention. The claimant had obtained judgment. It was reasonable to assume that it would be entitled to receive a significant proportion of the fees claimed. *Prima facie*, the claimant was entitled to an interim payment. Master Leslie was aware that the claimant had been undertaking work on a libel action for the defendant. According to him, the action had very high value. The claimant is well known in the field and charges for its expertise. Master Leslie was entitled to assume that the outstanding costs would amount to significantly more than £40,000. Whilst the defendant had contended that the fees were excessive, he was not suggesting that no costs had been incurred.

95. Mr Booth further contended that Master Leslie should not have ordered payment of an amount that the defendant was clearly unable to pay because of the Freezing Order. Furthermore, if Master Leslie did regard it as appropriate to order an interim payment of such a sum, he should not have ordered that failure to pay within a short period would result in the claimant recovering all the fees claimed. Mr Booth pointed out that it was clear from the transcript of the hearing that Master Leslie was aware that the claimant might well recover less than the full amount claimed. It was therefore wrong in principle, he said, for Master Leslie to make an order, the effect of which might be to require the defendant to pay more than the claim was worth. It was suggested that an alternative sanction for non-payment would have been to deny the defendant the right to make submissions on the assessment.

96. The defendant was not contending that he did not have sufficient assets to make a payment of £40,000. He was saying that he had assets well in excess of that sum, although he had produced no evidence to that effect. It is well established that, where a party seeks to avoid or limit a financial condition by reason of his own impecuniosity, the onus is on him to put sufficient and proper evidence before the court and make full and frank disclosure. This the defendant failed to do. According to him, the problem was that he did not have access to his assets because of the Freezing Order. It is clear from the tenor of Master Leslie's judgment that he was sceptical as to whether that was – or would remain – the case. It is clear that he formed the view that the defendant was seeking to avoid or postpone payment of the claimant's fees and was using the existence of the Freezing Order for this purpose.

97. I am satisfied that Master Leslie had no confidence that the defendant would make the payment ordered in the absence of a severe sanction. He was after all aware of the defendant's failure to comply with costs orders made in his litigation against the SRA/Law Society. He was also aware that fees had been owing to the claimant for many months and that the detailed assessment would result in further delay, as well as involving further costs. I am satisfied that it was for those reasons that he ordered that, if the payment was not made, the defendant would be liable for the whole of the fees claimed. However, he recognised that the defendant should have some protection in the event that he had a genuine problem in making the payment. Accordingly, he gave

the defendant permission to apply if necessary to vary the time for and/or the amount of the payment specified in his October Order.

98. Given the circumstances of the case, I do not consider that the defendant would have any real prospect of establishing that the Master's decision was wrong or that there is any other compelling reason why the appeal should be heard. Even if I had granted the extension of time, I would have refused permission to appeal Master Leslie's October Order.

99. I shall now consider the defendant's appeal against Master Leslie's November Order.

The appeal against Master Leslie's November Order

100. Master Leslie's October Order had directed that, in the event of the defendant seeking a variation of the amount of, or the time allowed for, payment, he should issue and serve an application with supporting evidence by 4 November 2009. This the defendant did. In the witness statement accompanying his application, he said that he was unable to pay the £40,000 as ordered because of the existence of the Freezing Order. He did not elaborate any further. In particular, he provided no evidence that he had made any attempts to persuade the solicitors for the SRA/Law Society or the court in the Freezing Order proceedings to release funds to enable him to comply with Master Leslie's October Order. Nor did he provide any evidence that he had made any other attempts to raise the money. There was no information about his assets or the likely time scale of the Freezing Order proceedings. In short, there was no evidence such as might be expected from a party who was making a genuine attempt to comply with an Order of the court.

101. Mr Booth said that Master Leslie's October Order had not specified the nature of the evidence the defendant should provide if he sought a variation in the amount of, or time allowed for, payment. He submitted that if, as was plainly the case, Master Leslie was dissatisfied with the evidence provided by the defendant, the proper course would have been to direct the defendant to file further evidence within a specified period and to extend the time for payment to permit that to be done. He argued that Master Leslie should have had in mind the draconian consequences of refusing the variation sought. He said that Master Leslie appeared to be aware that the defendant was unable to make the payment because of the effect of the Freezing Order. In those circumstances, it was, he said, quite wrong for Master Leslie to refuse to give the defendant an extension of time in which to pay.

102. At the hearing on 13 November 2009, the defendant was seeking the indulgence of the court in his application for an extension of time in which to pay. (Although he had also sought a variation of the amount to be paid, this was not in fact pursued at the hearing.) The evidence which he filed was plainly inadequate for the purposes of establishing that he had made genuine attempts to obtain the money to enable him to comply with Master Leslie's October Order. The claimant had pointed out its inadequacy on receipt of the defendant's witness statement, more than a week before the hearing. However, the defendant took no steps to file further evidence. As I have already observed, this is typical of his conduct in this litigation. It is plain, as I have said, that Master Leslie had already formed the view at the previous hearing that the defendant was seeking to avoid payment of the claimant's fees or, at the least, to postpone payment for as long as possible. He plainly considered that the defendant's

apparent failure to make any attempt to raise the necessary funds from any source constituted a further attempt at delay. Thus, Master Leslie observed at the conclusion of his short judgment:

> "There is simply not enough evidence before me to show that there is any real prospect of [the defendant] dealing with this in a satisfactory way".

103. In the circumstances, it cannot be said that Master Leslie was wrong not to exercise his discretion in favour of the defendant.

104. It is relevant to note that, even at the time of the hearing before me, almost a year after the second hearing before Master Leslie, the Freezing Order proceedings had still not been resolved and it appeared that, despite his constant assertions that his assets were well in excess of the £500,000 limit of the Freezing Order and of his intention to make an application to set aside the Freezing Order in order to enable him to comply with his financial obligations, the defendant had still not made such an application.

105. I therefore dismiss the defendant's appeal against Master Leslie's November Order.

106. In the light of my decisions, it will be necessary for the case to be re-listed for determination of the defendant's application for permission to appeal Master Campbell's Order and of any applications consequent on this judgment.