

**THE HIGH COURT**

**[2023] IEHC 382**

**2004 19212 P**

**BETWEEN**

**COLM MURPHY**

**PLAINTIFF**

**AND**

**THE LAW SOCIETY OF IRELAND AND SIMON MURPHY**

**DEFENDANTS**

**Judgment delivered by Mr. Justice MacGrath on the 24<sup>th</sup> day of May 2023**

**The Undertaking and Order of 1 March 2011**

1. By motion dated 15<sup>th</sup> October 2010, the Law Society of Ireland (“the Society”) made application to dismiss Mr. Murphy’s civil proceedings pursuant to the inherent jurisdiction of the court. It was contended that the proceedings were frivolous, vexatious, disclosed no reasonable cause of action, amounted to an abuse of process and constituted a collateral attack on final orders of the court. Orders were also sought prohibiting Mr. Murphy from instituting any legal proceedings against the Society, whether by way of fresh proceedings or appeals from previous proceedings, or attempts to reopen previous proceedings,

without first obtaining leave of the President of the High Court. In addition, the Society sought an order prohibiting Mr Murphy from instituting disciplinary or legal proceedings against any officers, employees, agents or legal representatives of the Society, whether past or present, or any member of any committee (whether present or past) appointed by the Council of the Law Society in respect any matter arising out of or relating to their work for and on behalf of the Society.

2. On the 1<sup>st</sup> of March 2011, the following order was made by the President of the High Court:

*“And on the undertaking of the Plaintiff by said Counsel not to institute any legal proceedings (whether by way of fresh proceedings or appeals from previous proceedings or attempts to reopen previous proceedings) against the Law Society of Ireland pending the determination of the within proceedings*

*And on the undertaking of the Plaintiff by said Counsel not to institute any disciplinary or legal proceedings against any of the officers employees agents or legal representatives of the Law Society of Ireland (whether present or past) or any member of any Committee (whether present or past) appointed by the Council of the Law Society of Ireland in respect of any matter arising out of or*

*relating to their work for or on behalf of the Society pending the determination of the within proceedings*

*IT IS ORDERED that*

- 1) the Plaintiff bring no further complaints to the Law Society of Ireland pending the determination of the within proceedings*
- 2) the said Motion be adjourned generally with liberty to re-enter (without prejudice to the right of the Defendants to apply to this Honourable Court for a determination as to whether portions of the within claim are non justiciable).”*

**Application to vacate or vary by motion dated 24<sup>th</sup> of February 2023.**

3. By notice of motion dated 24<sup>th</sup> of February 2023, Mr. Murphy seeks to re-enter the Society’s motion of the 15<sup>th</sup> of October 2010 and to apply for an order vacating, setting aside or varying the order of the 1<sup>st</sup> of March 2011. He wishes to be permitted to make various applications and appeals set out in his affidavit of the 7<sup>th</sup> of February 2023.

4. The background to these matters and the various disputes between Mr. Murphy and the Law Society have been set out in detail in this court’s judgments in the civil proceedings, “the principal judgment”, the general motion, the s. 18 proceedings, the strike off proceedings, and in the appeals from decisions of the SDT (“the ancillary proceedings”). The civil proceedings, within which this order was made, have been determined by this court. Mr

Murphy has indicated his intention to appeal from this decision in which his claim for damages was dismissed and also to appeal various other orders of the court in other proceedings. Mr. Murphy seeks to be released generally from the undertaking; or, in the alternative, to be released from his undertaking in respect of specific matters of complaint which he wishes to make. Mr Murphy seeks in the first instance to be released from his undertaking as a matter of principle, and has, alternatively, as will become apparent, suggested a further *via medium*.

5. In his grounding affidavit, Mr. Murphy outlines the reasons why he wishes to be released from his undertaking at this time. Mr Murphy wishes to be at liberty to make complaints to the Legal Services Regulatory Authority (“the LSRA”) against two individuals in particular, Mr John Elliot and Mr. Peter Law. This application is made against the background of the contentions of Mr. Murphy concerning the reliability and credibility of Solicitor X. In this regard, he references a number of matters, including that this Court allowed in part an appeal from the decision of the Solicitors Disciplinary Tribunal (“the SDT”) in respect of a complaint made by him concerning Solicitor X. It is contended that Mr. Elliot was guilty of misconduct by being untruthful in the evidence which he gave to this Court about Solicitor X. Mr Elliot was the Registrar of Solicitors and a principal witness for the Society in the civil proceedings. Mr. Law, a solicitor in A&L Goodbody, was instructed in the defence of the proceedings. He alleges that Mr Law was guilty of misconduct in respect of how the court

proceedings were handled by him, and in particular in the manner in which matters were progressed before Hanna J. in 2012. The allegations made by Mr. Murphy against Mr Elliot and Mr Law are outlined in a letter of the 3<sup>rd</sup> of February 2023 where Mr Murphy wrote: -

*“These solicitors have been involved in outrageous deceptions of the court and it is my intention to proceed with complaints against them. They have also repeatedly refused to correct the record even after the misleading of the court were specifically identified and pointed out to them. They are not above the law. The deception of Judge Hanna has cost the law society millions of Euros, has cost me at least ten years of my professional life and those involved must be held accountable. But of course, my complaint is not limited to the deception of Judge Hanna”.*

6. Mr Murphy also maintains that when he gave the undertaking in 2011, it was on the basis and understanding that his case would be dealt with, in full, at the earliest opportunity before Hanna J on 2 June 2011. He alleges that at that hearing, the Society misled Hanna J as to the basis upon which the case was before him. The court has addressed this allegation in its previous decisions. Mr. Murphy also raises various points that were raised during the course of one or other of the above proceedings and which he intends to air in the intended appeals. He places emphasis on the findings of this Court in the appeal 5297 / DT 170 / 10 (reference in this Court 2011 / 50 SA) and on various observations and criticisms made by the court regarding the actions of the Society.

Particular emphasis is placed by Mr. Murphy on the appeals which were upheld as being illustrative of the fact that the appeals were not vexatious.

7. Mr. Murphy also points to the *Healy* matter when this court, on a previous occasion, released him from his undertaking for the purposes of making an application for an extension of time in that case. He has also indicated that he intends to make a number of further applications including: -

- (i) An application to extend the time within which to appeal the orders made in the s. 18 proceedings and;
- (ii) An application to extend the time within which to seek to appeal the order in the strike off proceedings.

8. The Society does not oppose Mr. Murphy being released from undertakings which might impact upon any appeal which he may wish to lodge against any orders of this court. This much is evident from the replying affidavit sworn by Mr. Shane Dwyer who is the head of Regulatory Legal Services of the Society. Mr. Dwyer makes it clear that the Society's position is that it did not believe that Mr. Murphy's intended appeals from the High Court judgments in existing proceedings were captured by the undertakings but that for the avoidance of doubt, if the court deemed it necessary to vary the undertakings and permit the bringing of those appeals, the Society did not object. Similarly, he averred that the Society did not object to the undertakings being varied to permit Mr. Murphy to make applications to extend time to appeal the strike off proceedings and the s. 18 proceedings. He averred that the Society would make

applications to the Court of Appeal for appropriate case management having regard to then existing appeals.

**9. Orders made on 29<sup>th</sup> March 2023**

**(a) Court proceedings**

On this hearing, this court has already expressed the view that it is difficult to see how, given his constitutional right to appeal, Mr. Murphy's undertaking could have captured any appeal which he may wish to bring from the orders of this Court. To the extent that the undertakings were operative, the court has directed that Mr. Murphy be released from his undertakings to pursue any such appeals and applications to court for extensions of time.

**(b) Disciplinary Complaints**

**10.** In his affidavit sworn on behalf of the Society in opposing the application, Mr Dwyer avers that the Society objects to Mr. Murphy being released from his undertakings for the purpose of making disciplinary complaints against Mr. Elliot, Mr. Law or any other officer, employee, agent or legal representative of the Society in respect of any matter arising out of or relating to their work on behalf of the Society. He avers that to release Mr. Murphy from that undertaking, prior to the determination of the proceedings, would have a particularly disruptive effect on the Society's ability to address matters. He avers that Mr. Murphy's intention to make complaints about Mr. Elliot concerning evidence which he gave to this court regarding Solicitor X's

ability and skills, are based on assertions rather than any findings of the court. Similar points are made in respect of Mr. Law's role as legal advisor to the Society. The Society also point to the complaints made by Mr Murphy to An Garda Siochana in 2016/2017, in support of their expression of concern in this regard. Reference is also made to an email sent by Mr. Murphy to a number of named members of the Council of the Society, dated 23<sup>rd</sup> of May 2022, threatening to complain them to the LSRA, once the proceedings are concluded. The suggested basis of complaint is that they have not taken "*any steps to set the matter right before the court*". In that email, he also wrote that he would make an application to the court to make Council members personally responsible for any damages and/or costs awarded to him.

### **A Via Medium**

11. When the application was before this court, Mr. Murphy suggested a via medium. He suggested that, on the basis that the undertaking did not capture and/or that he was released from his undertakings in relation to any potential appeals and extensions of time applications any potential complaint be made only with the prior permission of the President of the High Court. The Society do not accept that this will allay its concerns regarding the potential for multiple applications being brought to the President of the High Court against a number of named individuals who are employed by, or who are members of the Council of the Law Society. It is submitted that correspondence from Mr. Murphy bears out the concerns which they harbour in this regard



**12.** In his replying affidavit, Mr. Dwyer, on behalf of the Society has averred that Mr. Murphy has a history of making complaints, including criminal complaints, in respect of Mr. Elliot and Mr. Law which, had they been permitted to proceed, would have interfered with the ability of the Society to properly defend the plenary proceedings. Mr Dwyer also points out that as a result of complaints made in 2016, application was made to the High Court in 2017. Kelly P. accepted a sworn undertaking from Mr. Murphy that he would withdraw any criminal complaints which he had made to An Garda Siochana and would not make any further criminal complaints against any of the officers, employees, agents or independent legal representatives of the Society.

**13.** In correspondence between the parties Mr. Murphy refers to a complaint seemingly made by a former President of the Law Society, concerning matters arising out of the civil proceedings. Mr Dwyer on affidavit, and counsel for the Society on this application informed the court that this complaint had been withdrawn. It does not appear to me that a complaint which a former President of the Society may or may not have made, or withdrawn, is central to the issue which this court is required to address.

### **Discussion**

**14.** I am satisfied that to the extent that the orders of this court remain appealable or have been appealed, the proceedings are not determined. No significant or compelling argument to the contrary has been advanced. I am

therefore also satisfied that the undertakings continue until such time as the proceedings have been determined at final appellate level, or as may otherwise be varied on this application.

**15.** A court ought not lightly make an *Isaac Wunder* type order, given that it places a restriction on the citizen's constitutional right of access to the courts. Such order should be made only when necessary to ensure that the process of the court is not abused. In *Riordan v. An Taoiseach (No. 4)* [2001] 3 I.R. 365 at p. 370, Keane CJ stated as follows:-

*“It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation.*

See also *Rippington v. Duffy & Ors* [2021] IECA 97 at para 61 and *Houston v. Doyle* [2020] IECA 289, where it was stressed that any such order must be made only to the extent necessary.

**16.** To date any potential issues which have arisen in respect of the making of fresh applications to court by Mr. Murphy have either been resolved (such as on this application) or liberty has been granted (the *Healy* matter). In considering whether a party be released from an undertaking, there would not appear to be any good reason why the principles underlying the jurisdiction to grant an *Isaac Wunder* type order, ought not apply. While it may be that the terms of an agreed undertaking are wider than those which might be imposed following application for an Isaac Wunder type order, as a matter of principle, it would not seem appropriate to hold a person to what is effectively a blanket ban on the making of any court application, even if time-limited, unless there is a continuing necessity to do so. Where a person wishes to be released from such undertaking, it would also seem appropriate that the court should have regard to the circumstances in which the undertaking was given. Given that Mr Murphy gave his undertaking in the context of an Isaac Wunder type application, I am satisfied that insofar as any *fresh* court proceedings are concerned, the prevention of any abuse of process is adequately guarded by the requirement to make application to the President of the High Court, pending the determination of these proceedings. In this context, to the extent that the undertaking given by Mr Murphy is capable of being

interpreted as excluding the right to make an application to the President of the High Court, I am satisfied that it ought to be modified in that regard.

**17.** It may be that restrictions made pursuant to an *Isaac Wunder* type application concern only court proceedings, rather than disciplinary applications. Although not *proceedings* before a court (at least initially), the continuation of the undertaking is also a restriction on the exercise of a right conferred by statute which is enjoyed by those who wish to make a complaint about, or concerning, the conduct of a member of the profession. The extent to which *Isaac Wunder* type orders are available to prohibit the making of such complaints was not actively canvassed before this court. Given that restrictions can be imposed on the constitutional right of access to courts, it would seem that, in principle, a similar type jurisdiction must exist in the context of complaints under statute where the evidence establishes that an abuse of process arises, or may potentially arise, or where the matter of complaint is an attempt to relitigate matters that have been the subject of court proceedings and may be the subject of a pending appeal or appeals. Absent more detailed argument on this point, I am satisfied that there is no reason in principle why dicta of Keane J. ought not to apply. Further, no argument was advanced to the effect that the *order* made by the President on 1 March 2011 was made beyond jurisdiction.

**18.** Therefore I propose to approach the application to be released from the undertaking with regard to disciplinary proceedings on the basis of principles similar to those which apply in an *Isaac Wunder* type application, namely

necessity to prevent an abuse of process. In the course of a ruling in 2017, referred to by the Society in its submissions and the transcript of which was exhibited to Mr Dwyer's affidavit, Kelly P. observed:

*“It’s small wonder in those circumstances, particularly since the complaints were made against the legal team who are at present appearing for the Law Society, that this motion was brought because from a practical point of view, never mind the legal point of view, to be able to effectively represent your client while at the same time looking over your shoulder at complaints which have been made concerning you to the Guards, is a virtually impossible task. It is fair to say that Mr. O’Mahoney acknowledged that at the outset. He said it would be very difficult indeed”.*

**19.** The Society submit, and I accept, that the rationale underpinning that ruling is a consideration of what is in the best interests of the administration of justice. I am satisfied that similar considerations apply on this application.

**20.** I have taken into account the circumstances in which the undertaking was given in 2011, and although Mr Murphy maintains that the undertaking was given in anticipation of an early hearing, I am nevertheless satisfied that the proposed subject matter of complaints relate to issues which have been heard and determined by this court or the role of witnesses or legal representatives in the proceedings. There is therefore a significant potential for a parallel process if Mr Murphy be at liberty to make the complaints. As Kelly P. observed , *to be able to*

*effectively represent your client while at the same time looking over your shoulder at complaints which have been made concerning you to the Guards, is a virtually impossible task.* Similarly, that a witnesses testimony before this court may the subject of a parallel complaint procedure before matters are finally determined is also, in my view, not in the best interests of the administration of justice.

**21.** The court has also considered the correspondence between the parties. It is implicit, if not patented, from such correspondence and communications, that many of the matters which are being raised by Mr Murphy with the Society and in respect of which he may or may not make complaints, tend to focus on the role, or potential future role (such as a suggested failure to address matters which are the subject of pending appeals) of officers or agents of the Society.

**22.** I do not believe that permitting complaints to be agitated in such manner, at this time, is in the best interests of the administration of justice and further, has the potential to be an abuse of process, as that term is legally understood. I am satisfied that if Mr Murphy were to be released from his undertaking not to institute disciplinary proceedings at this point in time against officers, employees, agents or legal representatives of the Society, or any member of any committee, that this would have the potential to be disruptive of the appeals process. In the circumstances, I am satisfied that the restrictions regarding the making of disciplinary complaints must remain in place pending the determination of the proceedings and that the *status quo* in respect of the order made by the President of the High Court on 1 March 2011, insofar as disciplinary proceedings are

concerned, should be maintained pending the outcome and final determination of any appeals in these matters. The undertaking is time-limited and remains in place until such time as the proceedings have been determined.

### **Summary and Conclusions**

**23.** Insofar as the institution of *court* proceedings is concerned, any restriction on the right to institute court proceedings must be no more than is necessary to prevent an abuse of process. I am satisfied that Mr Murphy must be at liberty to make appropriate application to the President of the High Court in respect of any court proceedings or applications which he may wish to make. To that extent, the undertaking given by Mr Murphy not to institute legal proceedings, whether by way of fresh proceedings or appeals from previous proceedings or attempts to reopen previous proceedings against the Society, pending the determination of the proceedings, are to remain in place, but subject to clarification that Mr Murphy be at liberty to make application to the President of the High Court to be released from that undertaking. In respect of any future court proceedings to the extent that any interpretation to the contrary is implicit in the order of 1 March 2011, that order is so varied and clarified.

**24.** With regard to the making of disciplinary complaints, I am not satisfied that it is appropriate that Mr Murphy should be released from his undertaking pending the determination of these proceedings.

**25.** Save for the orders already made on this application, or as otherwise clarified or varied in this ruling, I must refuse the relief sought.

