[2016]JMSC Civ.116

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012HCV02606

BETWEEN	**ANDREW WILLIS**	**CLAIMANT**
AND	**GENERAL LEGAL COUNCIL**	**DEFENDANT**

Keith Bishop and Romaine Tulloch instructed by Bishop and Partners for the claimant

John Vassell Q.C instructed by DunnCox for the defendant

Heard: 13th May, 2015 & 30th June, 2016.

Criminal Charge - Contemporaneous General Legal Council complaint - Stay of proceedings

Lawrence-Beswick J

Background

[1] In 2009. Mr. Andrew Willis and another person were arrested and charged for fraud and forgery resulting from allegations made by Mr. Dennis Rappaport. Subsequently, on July 20, 2010, before the trial of that matter had started, Mr. Rappaport filed a complaint against Mr. Willis with the General Legal Council (GLC) alleging misconduct, based on the same facts as those alleged in the criminal court. Disciplinary proceedings commenced in the GLC.

[2] Mr. Willis applied to the GLC for a stay of its proceedings pending the trial of the criminal charges, and this was refused with the resultant application for leave for judicial review of that decision which was granted.

[3] Mr. Willis has filed a fixed date claim form seeking:

> "a. A prohibition order to prevent the defendant and/or the Disciplinary Committee of the defendant from commencing a trial at the General Legal Council concurrently with a trial, on the same facts with the same complainant, at the Corporate Area Criminal Courts at Half-Way-Tree
>
> b.That the grant of leave continues to operate as a stay of the trial at the General Legal Council and
>
> c. Costs to be costs in the claim."

Claimant's Submissions

[4] Counsel for the claimant relied on s.12B of the Legal Profession Act to argue that that section clearly states that when criminal proceedings arise out of the same facts or circumstances forming the basis of an application before the GLC, the Disciplinary Committee of the GLC may hear and determine the application unless to do so would in the opinion of the committee, be prejudicial to the fair hearing of the pending criminal proceedings.

[5] The submission was that if Mr. Willis calls a witness in his defence at the disciplinary hearings, that evidence would be accessible to the persons prosecuting him in the criminal court. He would be exposing aspects of his defence at the GLC hearing. This, counsel argues, would compromise the claimant's defence in the criminal trial and would be unfair.

[6] The argument was that the purposes of the two proceedings were different. The disciplinary proceedings are to maintain discipline within the legal profession. The criminal prosecution is to address the violation of the law by the offender and may be heard in a shorter time than the other proceedings. Fairness should not be compromised to achieve an expeditious decision. Further, there would be no hardship or prejudice to the GLC if the stay were granted.

[7] According to counsel, the witnesses at both proceedings are likely to be the same. There would be publicizing of the result at the GLC and that might impact a magistrate sitting alone to hear the criminal matter after the GLC matter had been heard and publicized. The result would be conveyed electronically on the GLC website, via internet and would have wide publicitiy in the print media.

[8] A Magistrate, the argument continued, is required to have a minimum of 5 years at the bar whereas the hearings at the GLC would usually be conducted by three very senior attorneys-at-law. Indeed in this case the total years at the bar of the three members of the GLC who would try the matter is likely to be about 100 years. The suggestion was that the Magistrate would be influenced by the seniority of the members of the Disciplinary Committee.

[9] Therefore, whilst counsel accepts that the GLC has the authority to proceed with the trial, the submission was that the level of prejudice to Mr. Willis would be so great that it would be unfair to continue the disciplinary proceedings until after the conclusion of the criminal proceedings.

Defendant's Submissions

[10] Queen's Counsel, Mr. Vassell made the initial submission that the proceedings were bad because the Fixed Date Claim Form was defective. He based that on the fact that the claimant had been given leave to seek an order for prohibition but the Fixed Date Claim Form sought an order different from that. He continued that the order uses "prohibition" wrongly.

[11] Mr. Vassell, argued further on behalf of the GLC that in addition, disciplinary proceedings can be properly determined notwithstanding that there are concurrent criminal proceedings. He submitted that it is a matter for the exclusive discretion of the Disciplinary Committee of the GLC, subject only to the supervisory jurisdiction of the Court, whether to pursue the disciplinary proceedings whilst criminal proceedings are pending. The committee would have to decide if it would be prejudicial to the fair hearing of the criminal proceedings. Queen's Counsel argues that the committee is able

to balance the competing interests of the public and of the attorney-at-law, by reason of its composition.

[12] Queen's Counsel observed that the claimant had not complained of any specific thing which the Committee had stated or done which shows that it adopted a wrong approach or misdirected itself in some manner in reaching its decision.

[13] Mr. Vassell further argued further that there is no risk of publicity of the evidence taken in disciplinary proceedings because it is given in private. He also submitted that the applicant had already voluntarily disclosed his defence in his affidavit supporting his application for leave to apply for judicial review. He would therefore suffer no prejudice. It was clear, he said, that the Panel had correctly considered the risk of this to be minimal in this case, or not sufficient to tip the balance in favour of granting the stay.

[14] Queen's Counsel submitted that in order for a stay of execution to be justified, there must be a real, not merely a speculative, risk of prejudice. The committee was correct, having considered the matters urged in support of the application for a stay, in not regarding those matters as rising to the level of really serious prejudice justifying the grant of a stay. It has not been shown that the Committee adopted a wrong approach or failed to have regard to all relevant considerations. He submitted further that it cannot be said that there is evidence on the facts of this case that the committee failed to appropriately balance competing considerations and that its decision was manifestly unreasonable or manifestly unfair to the claimant.

[15] In addition, the argument went, the criminal matter was not proceeding with expedition but had been part heard for continuation. The grant of the stay would result in considerable delay in determining the disciplinary complaint. The Court should not set aside the lawful exercise of the discretion of the Disciplinary Committee and substitute its own judgment or decision.

Discussion

[16] This application seeks judicial review of the decision of the Disciplinary Committee of the GLC to refuse an application for a stay of proceedings before the GLC pending the completion of criminal proceedings based on the same allegations. The complainant had filed his complaint to the GLC based on the Legal Profession Act[1] which empowered him to do so.

[17] The relevant section provides:

> "12(1) Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person,... in respect of allegations concerning any of the following acts committed by an attorney, that is to say(a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect); (b) any such criminal offence as may for the purposes of this provision be prescribed in rules made by the Council under this Part."

[18] It is not disputed that there was before the criminal court a matter which was based on the same allegations as those before the GLC. As if anticipating the possibility of that scenario, the Legal Profession Act speaks specifically to that where in s.12B it provides:

> "12B (1) It is hereby declared, for the avoidance of doubt
>
> that where-
>
> (a) an application made in respect of an attorney pursuant

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[1] Section 12

to section 12 is pending and

(b) criminal proceedings arising out of the facts or

circumstances which form the basis of the application

are also pending,

the Committee may proceed to hear and determine the application, unless to do so would, in the opinion of the Committee, be prejudicial to the fair hearing of the pending criminal proceedings."

[19] The decision of the GLC not to stay its proceedings is therefore supported by the Act. However it is judicial review of that decision which is sought. Judicial review is the exercise by the Supreme Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts and, in this circumstance, over the GLC which carried out quasi-judicial functions.

[20] Halsbury's Laws of England concisely states the purpose of a judicial review, and the extent to which the Court can properly go in such an application.

> "The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers."[2]

Here there has been no allegation falling within any of these categories. The complaint is that in failing to stay the proceedings the claimant is being treated unfairly and unjustly and also unreasonably because he will expose evidence before the GLC which would prematurely reveal his defence in the criminal matter. This shows that the complaint concerns the effect of the decision and the

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[2] 4th Ed. Vol (1) par. 59

merits of the decision. It does not challenge the manner in which the decision was made.

[21] Judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself. It follows therefore that judicial review of the GLC's decision would be inappropriate.

[22] The claimant is seeking by this application, to substitute the opinion of this court for the decision of the GLC, although making no allegation against the legitimacy of the GLC's decision making process. That is not the purpose of a judicial review. In view of this finding it is unnecessary to determine the correctness of the Fixed Date Claim Form.

Conclusion

[23] The claimant has sought judicial review of a decision of the GLC but has made no allegation that the decision making process of that body was faulty. The application for review concerns only the merits of the GLC's decision. That is not properly a basis for judicial review. In any event the continuation of both proceedings simultaneously would not, in my view, result in injustice to the claimant.

[24] Rule 56.15(5) of the CPR provides:

> "The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."

[25] In view of the discussions above I refuse the application for judicial review and make no order as to costs.