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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered: 05/03/2018*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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PAUL MURPHY

Appellant:

-v-

THE TAXING MASTER

Respondent:

_____

Before: Stephens LJ & Treacy LJ

_____

STEPHENS LJ (giving the judgment of the court)

Introduction

[1] This is an appeal brought by Paul Murphy ("the appellant") from an order of McCloskey J dated 23 October 2017, refusing the appellant leave to bring judicial review proceedings against the Taxing Master for Northern Ireland. The appellant contended that the Taxing Master had unlawfully decided to refuse to order discovery in relation to taxation proceedings. In the alternative the appellant had contended that the Taxing Master had failed to consider the question of discovery.

[2] The learned judge refused leave on the basis that there was no decision of the nature alleged by the appellant and given that a decision was essential to judicial review, leave should be refused. In the alternative, the learned judge held that the judicial review application was satellite litigation in on-going taxation and was a wholly misconceived endeavour to procure procedural micro-management of the taxation process. We also note that at paragraph [13] of his judgment the learned judge concluded:-

> "… that if and insofar as it is possible to identify a 'decision' of the Master in the terms asserted by the Applicant, the grounds of

> challenge do not disclose any discernible arguable public law misdemeanour, by a considerable measure. They are replete with bare, unparticularised assertion; they are formulated in an unreal, imaginary vacuum and they complain of procedural unfairness in a context where the procedure is far from complete and is some distance from the stage when any proper evaluation of overall fairness will fall to be conducted."

[3] The appellant appeared in person. Mr McAteer appeared on behalf of the proposed respondent. Prior to the hearing of this appeal, the potential assistance of a McKenzie Friend was brought to the attention of the appellant but he has not availed of that assistance.

[4] We give this ex tempore judgment and direct that it should be transcribed.

Failure to comply with the Practice Direction 1 of 2016 and with the court's directions

[5] Under the Practice Direction the obligation was on the appellant to provide a Book of Appeal and to provide a skeleton argument within the appropriate time periods. At a review before this Court, the respondent indicated that it would prepare the Book of Appeal given that the appellant appeared in person and in accordance with the appropriate degree of latitude permitted to litigants in person. In our view the appellant was quite capable of preparing the Book of Appeal as evidenced by his ability to write lengthy letters and also as evidenced by the number of emails that he sends to the parties and to the court office, together with evidence of his professional qualifications and his ability to run his own engineering practice.

[6] We consider that the proposed respondent's agreement to prepare the Book of Appeal was one that this Court would not have imposed being an unnecessary latitude to a personal litigant whom we assess had the ability to perform this task. The only impact of the failure of the appellant to take on the task of preparing the Book of Appeal is that if there is anything missing from it upon which the appellant wishes to rely, then that is a matter of his own creating. We also note that the Book of Appeal was sent by the respondent's solicitors by recorded delivery to the appellant. The appellant was not in at the time or alternatively did not respond to the postman and a note was left at the appellant's address informing him that a recorded delivery letter could be collected from the Post Office. The appellant accepts that he received that note and accepts that he did not go to the Post Office to collect the Book of Appeal.

[7] The proposed respondent's solicitors then, when they were notified that the appellant had not received delivery of the Book of Appeal, went to the lengths of scanning the Book electronically and sending it to him by email. The appellant accepts that he received that email and was able to consider it.

[8] The appellant has failed to submit any skeleton argument and is in breach of both the Practice Direction and the directions of this Court. It is essential for the proper preparation of appeals that skeleton arguments are submitted so that the opposing party and the court are aware of the arguments being advanced. A failure to submit a skeleton argument is a matter of concern with a potential impact on the other party and on the court's ability to deal with cases expeditiously and fairly. If any prejudice is caused to the respondent by that failure then this court will consider the appropriate steps to be taken including potentially dismissing the appeal on that ground alone.

Factual background

[9] The appellant and his brother, Martin Murphy, have been involved in a long-standing dispute which the appellant asserts is in relation to the financial affairs of their brother, Eugene Murphy, who is stated to be a vulnerable adult with a diagnosed mental disability. The appellant asserts that his examination of Eugene Murphy's circumstances and his finances "etc." uncovered what the appellant describes as the criminal activity of Martin Murphy, which are alleged to have included, extensive fraud, theft and embezzlement. The appellant states that in retaliation against him, he has been subjected and been the victim of a sustained and concentrated campaign of violence, abuse, threats, intimidation, harassment, pestering and oppression at the hands of Martin Murphy. The appellant obtained an ex-parte Non-Molestation Order against his brother, Martin Murphy, in the District Judge's court under the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

[10] It is not necessary to set out the history of those proceedings except to state that by a Notice of Appeal dated 12 August 2015, the appellant appealed to the High Court. The matter came into the list of O'Hara J on 22 September 2015, occupying some 15 minutes of court time on that date. It is apparent that at that review an issue arose as to whether there was any jurisdiction for the High Court to hear the appeal. The court directed that the matter be reviewed again on 13 October 2015.

[11] On 13 October 2015 there was no appearance by or on behalf of the appellant. O'Hara J dismissed the appeal without adjudication on the merits on the basis that the High Court had no jurisdiction to hear the appeal. An Order for costs was made in favour of Martin Murphy against the appellant, such costs to be taxed in default of agreement.

[12] There has been no agreement as to the amount of costs to be paid by the appellant to Martin Murphy and so the matter proceeded to taxation before the Taxing Master.

[13] The Bill of Costs had been prepared on behalf of Martin Murphy by Mr Doherty, Legal Tax Costs Consultant. The costs are in relation to the professional fees of Mr Fields, Solicitor, for Martin Murphy and Mr Lannon, Counsel for Martin Murphy, together with outgoings.

[14] By letter dated 23 May 2017, the appellant sought from Mr Doherty what he described as voluntary discovery. The document seeking voluntary discovery runs to some 6 pages. There then followed applications to the Taxing Master for an Order for discovery which prompted a reply on behalf of the Taxing Master from Court Service dated 16 June 2017. That reply was in the following terms,

> "Dear Mr Murphy
>
> The Taxing Master has read and considered your letter of 15 June 2017 and has asked me to reply as follows.
>
> The issues you raise will be dealt with by the Master when the bill is taxed insofar as they are relevant to taxation.
>
> The Taxing Master has directed me to write to Mr Doherty, Costs Drawer, requiring him to provide –
>
> - An itemised bill detailing the time spent by Counsel and Solicitor in court and the time spent consulting;
> - A schedule of work itemising the work undertaken by the Solicitor;
> - One complete set of pleadings;
> - One copy of the brief to counsel together with counsel's advice and opinion.
>
> The Master has also directed that the Solicitor's complete file should be brought to court for the purpose of the Master's examining correspondence and attendance notes.
>
> The Master has directed that this be done within 2 weeks and that a copy of the itemised bill should be served on you.
>
> Thereafter the matter will be listed for taxation before the Master.
>
> Claire Dalzell
> Signed on behalf of the Courts & Tribunal Service
> CC Gerard Doherty, Costs Drawer."

[15] The learned judge held and we agree that this was not a refusal of an order for discovery. The learned judge went on to state at paragraph [12] of his judgment,

> "I consider the correct analysis to be as follows. What the Taxing Master has done is to highlight, in a purely informative and non-binding way, that the taxation proceedings are ongoing; the issues raised in the Applicant's discovery request will be fully considered; the request (in terms) is premature; and the documents provision whereof has been directed by the Master will be copied to the Applicant when received. This has been effected, and communicated to the Applicant, through the entirely appropriate – and laudable – mechanism of an informal case management indication."

[16] We agree with what the learned judge said at paragraph [12] except the phrase "the documents provision whereof has been directed by the Master will be copied to the Applicant when received." The letter makes it clear that what is to be copied to the applicant is the itemised bill which is to be served on him. There is, of course, sensitivity around documents contained in a solicitor's file, that sensitivity being the legal professional privilege of the client not of the solicitor. That is a topic to which we will come back.

[17] We consider that this is a simple taxation of a Bill of Costs. The Master correctly stated in the letter from the Court Service, that the issues that the appellant raises will be dealt with by the Master when the Bill is taxed "insofar as they are relevant to taxation." The appellant appears to be under the impression that the taxation process can be used to unearth or to evidence criminal activity on the part of Martin Murphy and/or those advising him. For instance, he asserts in his letter dated 26 June 2017 that "There is a long established principle that criminals must not profit from their crimes." The Taxing Master should not be deflected from the task entrusted to her of taxation of a failed appeal by the appellant to the High Court under The Family Homes & Domestic Violence (Northern Ireland) Order 1998.

[18] The appellant is not entitled to look through these documents for a totally different purpose than the purpose of taxation. The Taxing Master does not have jurisdiction to decide whether anyone did anything inappropriately in relation to some other legal proceedings. If the appellant wished to oppose an order for costs on the basis of misconduct or on any other basis then he should have done so in front of O'Hara J.

The grounds of the appeal

[19] The appellant states that the grounds of appeal will be properly formulated after he receives a transcript of the judgment and the audio recording of the court proceedings on 13 October 2017. We note that the appellant has obtained a copy of the judgment and we note that he has obtained a copy of the audio recording. He has not explained why he needed a copy of the audio recording in order to amend his Notice of Appeal. He was present during the course of that appeal, he had a

copy of the judgment, he knew the arguments that were being made, there was plenty of opportunity for him to formulate full grounds of appeal when he initially put in his Notice of Appeal. We note that he has not amended his Notice of Appeal having received the audio recordings and having received the judgment.

[20] The first ground of appeal is a single word "bias." It is not clear what is being alleged by way of bias and against whom the bias is alleged. We consider that this ground of appeal lacks any degree of particularity, it does not disclose any ground of appeal and given its lack of particularity it is obviously unsustainable. We consider that this ground of appeal amounts to nothing more than that the appellant says the court reached the wrong decision on unspecified grounds and that the only explanation could be bias. We reject that ground of appeal.

[21] The second ground of appeal is stated to be "the continuing unfair treatment and prejudice/discrimination by the courts against the appellant acting in person while ignoring the merits, significance and public interest of their application." This appears to be a general allegation in relation to all the courts so as to infer that the learned judge was prejudiced against the appellant. There is no evidence to support that proposition, but rather the judgment of McCloskey J shows that he conscientiously and carefully analysed the case being made by the appellant. We would observe that disappointment by the appellant in the result is not evidence that the learned judge ignored the merits of the appellant's application. There is no evidence that the learned judge ignored any public interest or any matter of importance or of significance. We reject that ground of appeal.

[22] The third ground of appeal is "malfeasance in public office by court officials and members of the judiciary." This also is a sweeping un-particularised ground of appeal and for the reasons we have expressed in relation to the first ground of appeal, we also reject this ground of appeal.

[23] We do not consider that there is any substance in any of the grounds of appeal advanced by the appellant. We observe that it is a feature of the Notice of Appeal that there is no express challenge to the judge's ruling that there was no impugned decision, that this is satellite ligation and there was no arguable public law misdemeanour. We agree with all the judge's conclusions in relation to those matters.

[24] We also have given consideration to the following additional points. The first is, the question as to whether the Taxing Master is in any event amenable to judicial review being a Master of the High Court. We have considered the various authorities which have been opened to us but it is not necessary to come to a conclusion in relation to that issue given our other conclusions. However we would tend to the view without deciding that the Taxing Master carrying out her duties under the provisions of Order 62 and taxing costs ordered by a High Court judge, is in fact exercising her duties in the High Court and therefore would not be subject to

judicial review. But as we have indicated we do not consider it is necessary to come to any final conclusion in relation to that aspect of this appeal.

[25] The next point is that in any event as the appellant recognises he has got an alternative remedy. He has rights of review of any decision made by the Taxing Master and he has rights of review in relation to the appeal process to the High Court. On that additional ground we consider that the learned judge was correct not to grant leave in this case.

[26] Before leaving the case we emphasise again that any allegation of misconduct is an allegation of misconduct not in relation to the appearance before O'Hara J, but in relation to some other proceedings. The Master has no jurisdiction to enquire into anything which has nothing to do with the proceedings in front of her and we emphasise again that the taxation process is an entirely inappropriate vehicle for investigating allegations of misconduct of that nature.

Conclusion

[27] We dismiss the appeal.