



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 12
XA88/16 & XA89/16

NOTE BY LORD GLENNIE

in respect of motion in the application for leave to appeal

by

CAROLINE KENNEIL

Applicant

against

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondent

Applicant: Party

Respondent: L McMillan (sol adv); Brodies LLP

30 January 2018

[1] In December 2016 I refused an application by Mrs Kenneil in two processes, XA88/16 and XA89/16, for leave to appeal against a decision of The Scottish Legal Complaints Commission (“SLCC”), to the effect that her complaint against a solicitor or a firm of solicitors was out of time.

[2] At the end of giving my decision, I awarded expenses against Mrs Kenneil to pay SLCC’s expenses of the application in each process, and remitted an account to the auditor to tax. In fact, for reasons which I need not go into at this stage, the remit was varied to enable the auditor of the sheriff court to deal with the matter, but nothing turns on that.

[3] The auditor has prepared an account of expenses in each process. Mrs Kenneil has enrolled motions in each case to allow notes of objection to the auditor's taxation to be received and, indeed, to require the auditor's report not to be received. That latter part of the motion is, I think, another way of saying much the same thing.

[4] It is not apparent from Mrs Kenneil's note of objections that she challenges in a focused way any particular item in the account of expenses. What she does, and I can illustrate her challenge under reference to the first item in the audited account (which concerns time spent by the solicitor advocate for the SLCC in perusing and considering the application for leave to appeal and revising the answers), is to say that that solicitor, in her perusal and consideration of the documents, got it wrong; so that everything that followed was unjustified. What that really boils down to is a root and branch challenge to the order of the court in each case refusing her application for leave to appeal: she argues that the decisions made by the SLCC were wrong; that the order of the court refusing her application for leave to appeal against those decisions was also wrong; and, therefore that the solicitor advising the SLCC should not be allowed any of her expenses incurred in opposing her applications for leave to appeal, since such opposition was misguided. But in fact Mrs Kenneil's motion goes even further than that, raising as it does issues as to the way in which her case has been dealt with right from the beginning and calling into question the professionalism and the integrity of various of the firms and individuals involved in the proceedings.

[5] That is not a legitimate objection to the account of expenses prepared by the auditor. The account of expenses proceeds upon the basis that the court has made an order refusing Mrs Kenneil's application for leave to appeal in each case, and has further ordered Mrs Kenneil to pay the expenses of the SLCC in each application. In each case the court has

remitted the account of expenses to the auditor to tax. The audit is not a process in which the disappointed party, in this case Mrs Kenneil, can re-open the substantive issues which have been dealt with by the court. Nor can it be used to question the orders for expenses on the basis of which it proceeds. The only purpose of the audit is to ensure that the expenses claimed by the successful party, that is the SLCC, in respect of the matters covered by the order for expenses, are proper and reasonable in accordance with the rules of court and established case law. That is to say in the present case, if there was some item of expenses which was exaggerated or which was impermissible, that can be knocked off by the auditor; and if the auditor is wrong in principle on particular items of expenses or generally in proceeding in the way he does, that can be challenged by the note of objections. But the note of objections procedure is not available to challenge the underlying orders of the court pursuant to which the auditor has proceeded to tax the expenses.

[6] Nothing in the note of objections lodged in either application in the present case touches upon the detail of the account of expenses in each case. What it seeks to do, as I have said before, is to re-open the decisions of the court leading to the taxation of the accounts, namely the orders refusing leave to appeal and awarding the expenses of each application to the SLCC; and, indeed, it seeks to re-open earlier decisions and call into question proceedings and conduct stretching back over many years.

[7] It is not for the court on this application to express any view about those matters. Such matters have been dealt with by previous orders of the court and are, in any event, entirely separate from the current application, which concerns the lodging of a note of objections. Such notes of objections are properly concerned only with the question of whether the auditor has conducted the taxation properly; and there is nothing in the note of objections in either case here even to raise a suggestion that he has not. In those

circumstances, the note of objections in each case is, in my view, wholly irrelevant and probably incompetent.

[8] For those reasons, I refuse Mrs Kenneil's motion in each process to allow the note of objection to be received and/or to require the auditor's report not to be received.