

THE HIGH COURT

[2004 No. 19853 P.]

IN THE MATTER OF A TAXATION OF SOLICITOR – CLIENT COSTS

BETWEEN

MONICA LEECH

PLAINTIFF

AND

INDEPENDENT NEWSPAPERS (IRELAND) LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 20th day of December, 2019

Introduction

1. This application concerns a review of taxation in respect of a ruling of the Taxing Master dated 10th January, 2018, and a further ruling of the Taxing Master following objections having been carried in, which ruling was dated 25th January, 2019, in respect of solicitor and client fees due to Messrs McCann Fitzgerald, solicitors from the plaintiff. The plaintiff has raised a number of grounds on which she submits the Court should review the ruling made by the Taxing Master on 25th January, 2019, and should alter certain of the findings made by him therein.
2. Before coming to the substance of the plaintiff's complaint, it is appropriate to set out a very brief summary of the background to the professional relationship between the plaintiff and McCann Fitzgerald, solicitors, (hereinafter referred to as "*the solicitor*"). The plaintiff initially consulted the solicitor in relation to a series of articles that had been published in the Evening Herald newspaper between 30th November, 2004, and 15th December, 2004. The plaintiff instituted defamation proceedings against the defendant in respect of a number of articles in that newspaper. The plaintiff also issued similar proceedings in respect of articles in other newspapers published by the defendant. The plaintiff's case in relation to the articles in the Evening Herald came on for hearing in the High Court in June 2009. The trial lasted for seven days. The jury awarded the plaintiff €1,872,000 in damages. The defendant successfully appealed to the Supreme Court, which awarded the sum of €1,250,000 as damages for defamation.
3. The work the subject matter of the instructions fee sought by the solicitor in the Bill of Costs took place over a period of six years and eight months between 15th December, 2004, and August 2011. By August 2011, relations between the plaintiff and the solicitor had broken down. By letter dated 8th August, 2011, the solicitor informed the plaintiff that the firm could no longer act for her. By letter dated 11th August, 2011, the plaintiff requested that the file be transferred to a different firm of solicitors. An order giving the solicitor liberty to come off record on behalf of the plaintiff was made on 7th February, 2012.
4. The taxation of costs process was quite lengthy. The notice to tax issued on 13th February, 2014. The taxation commenced on 14th November, 2014, and was heard on a number of dates thereafter culminating in hearings on 14th and 15th April, 2016. The Taxing Master issued his ruling on 10th January, 2018.

5. Thereafter the plaintiff raised objections in respect of the ruling by way of three letters, which were submitted by her to the Taxing Master. The solicitor also raised objections in writing on 9th April, 2018. The objections were heard before the Taxing Master on 26th June, 2018, 23rd July, 2018, and 19th November, 2018. The Taxing Master delivered his ruling on the objections on 25th January, 2019.
6. By notice of review of taxation dated 15th February, 2019, made pursuant to section 27(3) of the Courts and Court Officers Act, 1995 and Order 99, rule 38(3) of the Rules of the Superior Courts, the plaintiff sought a review of the taxation on the grounds set out in the schedule to the notice.
7. At the hearing of this review of taxation the plaintiff sought to challenge the Taxing Master's ruling on the objections on five grounds, which can be very briefly summarised as follows: (1) that the Taxing Master made an error in the quantification of the instructions fee in his original ruling, such that the ultimate instructions fee which was allowed by him in that ruling was €10,500 greater than it should have been; (2) that the hearings in respect of the taxation were tainted by the fact that the solicitor's original file was absent from those hearings, such that the plaintiff did not obtain a fair hearing; (3) that the Taxing Master had incorrectly assessed a fee as being due to the solicitor in respect of a mediation, despite the fact that the plaintiff had an agreement that her liability for fees in respect of the mediation would be capped at €10,000; (4) that the Taxing Master had not taken adequate account of the fact that the plaintiff had been furnished with a fee estimate in advance of the hearing of the action, wherein the instructions fee was estimated at a figure which was circa 20% of the fee ultimately charged by the solicitor, and (5) the Taxing Master had acted unreasonably in allowing the sum of €2,000, together with an additional €4,230.15 for outlay on postage and photocopying.
8. Counsel on behalf of the solicitor made a number of submissions of both law and fact as to why these grounds of objection raised by the plaintiff, were without substance. These will be dealt with later in the judgment when considering each of the grounds raised on behalf of the plaintiff.

The Grounds Raised by the Plaintiff on the Review of Taxation

9. The plaintiff's first ground for seeking a review of the ruling of the Taxing Master, was on the basis that he made a quantification error in his initial ruling when computing the sum that should be allowed as the solicitor's instructions fee. In that ruling the Taxing Master had noted at paragraph 35 that the instructions fee had been charged at €177,400. How that figure was arrived at was explained in paragraph 39, where the Taxing Master stated that he had been told that the total value of the time expended by the various fee earners amounted to €253,755 and that a discount of €76,333 had been applied, representing about 30% of the value of time expended, leaving the sum claimed at €177,400. He went on to note that it was probable that the 30% reduction was intended to represent the fact that there was a considerable amount of overlapping of work undertaken by the solicitor on the various defamation cases, which she was pursuing on behalf of the plaintiff against the same group of newspapers.

10. The Taxing Master then went on to analyse in his ruling the various time summaries which had been provided by the solicitor in respect of work done on the case against the Evening Herald, together with a time summary in respect of the work done on a subsequent mediation and on the Supreme Court appeal, up to the time that their retainer was terminated by the plaintiff. At paragraph 45 the Taxing Master calculated the totality of the solicitor's professional fees at €238,813 and not €253,755 as put forward by the solicitor as being due on the time assessment basis. He further noted that the 30% reduction would have to be applied to that figure.
11. The plaintiff's main area of complaint concerned the findings made by the Taxing Master at paragraphs 66 and 67 of his ruling dated 10th January, 2018. There he had carried out an analysis of the reckonable time before the application of the solicitor's voluntary 30% reduction. He started with a total time charge of €253,755 and then proceeded to make a number of deductions therefrom, including the voluntary 30% reduction. This gave a net claimable instructions fee of €173,178. He stated that based on the records produced, together with the 30% reduction, that sum appeared to represent the maximum which could be charged by way of instructions fee. The plaintiff contended that that figure was incorrect, because he had used the incorrect headline fee of €253,755, when in accordance with his finding at para. 45, he should have started by using the figure of €238,813.
12. The plaintiff further submitted that in the following paragraphs in his ruling, the Taxing Master had accepted that some additional regard must be had to unapportioned work which may not have been covered by the 30%, or for work which he had held that no allowance arose. He noted that it was impossible to be precise in that regard. He then went on to have regard to a number of additional factors which had to be taken into account pursuant to the requirements of section 27(1) of the Courts and Court Officers Act, 1995 and pursuant to the provisions of Order 99, rule 37(22)(ii) of the Rules of the Superior Courts. He went on to look in some detail at specific factors that were relevant to the particular case before him. Having done all of that, he assessed the allowable instructions fee at paragraph 73 of the ruling at €165,000.
13. It was submitted on behalf of the plaintiff that the reduction from the instructions fee allowed in paragraph 66 of €173,178 to the fee ultimately allowed in paragraph 73 of €165,000, represented a reduction of approximately 5%. It was submitted on behalf of the plaintiff that if the correct headline figure had been used, as the plaintiff submitted it ought to have been used and if the relevant reductions had been made to that figure, including the additional 5% reduction, the proper instructions fee would have been assessed at €154,584. It was submitted on behalf of the plaintiff that this was a clear quantification error, whereby the Taxing Master had used the wrong headline figure as his starting point for his calculations as set out in paragraph 66, rather than the correct headline figure assessed on the time basis as provided for in paragraph 45 of his ruling. It was submitted that as that was a clear and manifest error, it should be corrected by this Court on a review of the taxation.

14. Counsel submitted that the Court was entitled to review a Taxing Master's determination where it was clear that he had made an error in his calculations. In this regard he referred to the decision in *Minister for Finance v. Goodman & Ors. (No. 2)* [1993] 3 I.R. 333, where Laffoy J. stated at page 354:

"On the authorities, it is clear that the Court is entitled to review, in the sense of alter, the Taxing Master's determination if it is shown that he has erred in principle or, alternatively, that, although applying correct principles, he has arrived at the incorrect amount for any item in the bill. It is in considering whether error has been shown, whether error of principle or error of quantification, that judicial restraint comes into play. However, if, applying the standard of the proof applicable to civil matters, proof on the balance of probabilities, the Court is satisfied that error has been shown, it must intervene and, as required by O. 99, r. 38(3) substitute for the decision of the Taxing Master an order which achieves a just result."

15. Mr. Fitzgerald B.L. further submitted, that insofar as it may be argued on behalf of the solicitor, that the plaintiff should be prevented from raising this ground of review, due to the fact that she had not raised it in writing in her objections brought in to the Taxing Master, the Court should have regard to the fact that the plaintiff represented herself in the taxation process. It was submitted that the Court should allow considerable leniency to a person who was acting in legal or quasi legal proceedings as a lay litigant. It was accepted that the plaintiff had not raised the quantification point at the objection stage of the taxation process, due to the simple fact that she had not spotted the Taxing Master's error until after he had ruled on the objections in his ruling dated 25th January, 2019.
16. Alternatively, counsel submitted that the Court was given considerable discretion pursuant to the provisions of Order 99, rule 38(4) which provided that the motion to review the taxation shall be heard and determined by the Court upon the evidence which had been brought in before the Taxing Master and no further evidence shall be received upon the hearing thereof, "*unless the Court shall otherwise direct*". Counsel submitted that the final portion of that rule enabled the Court to have considerable latitude in its consideration of the grounds on which it would review the rulings of the Taxing Master.
17. In response to this point, Mr. Keating B.L. on behalf of the solicitor, submitted that the system of taxation provided for in Irish law was a layered system which provided that having heard the parties, the Taxing Master would give an initial ruling on the disputed items in the Bill of Costs. Thereafter, both parties were given an opportunity to bring in written objections to the ruling that had been made by the Taxing Master. There would then be a further consideration of the matter by the Taxing Master, who would proceed to issue his ruling on the objections. If either party remained dissatisfied with that ruling, they had a right to seek a review of the Taxing Master's ruling before the High Court.
18. Counsel submitted that it was settled in Irish law that one could not raise new grounds on a review of taxation before the High Court, which had not been raised at the objection

stage. In this regard counsel referred to the decision of Blaney J. in *O'Sullivan (an infant) v. Hughes* [1986] I.L.R.M. 555.

19. Counsel submitted that it was also well settled in Irish law, that while the courts will give some leniency or leeway to a lay litigant who is representing himself in legal proceedings, the court will not allow them to ignore the rules, or operate under a totally different set of rules, as that would be unfair to the opposing party. In this regard, counsel referred the Court to the decisions in *Burke v. O'Halloran* [2009] 3 I.R. 809 and *Duffy v. Clare County Council* [2013] IEHC 51.
20. Counsel submitted that insofar as it had been argued by the plaintiff that, while she had not specifically raised the quantification issue, because she had raised other issues in relation to the instructions fee, that was sufficient to allow her to raise her objection on the quantification point at the review hearing before the High Court; counsel stated that it was clear from the objections ruling of the Taxing Master, that while there was some reference to the instructions fee, it had nothing at all to do with the point being raised by the plaintiff.
21. In relation to the assertion that the Court had a discretion under Order 99, rule 38(4) to allow in new grounds of on a review of taxation, counsel submitted that that was a misunderstanding of the rule. All the rule provided was that the Court on a review of taxation could allow in further evidence in respect of grounds that had been raised before the Taxing Master at the objection stage. It did not permit the Court to allow new grounds which had not been raised before the Taxing Master.
22. In summary, it was submitted that having regard to the settled principles of law on this aspect, the plaintiff's application under this heading must fail *in limine*. It was submitted that it was not permissible for the plaintiff to raise new grounds of objection to the Taxing Master's original ruling, which had not been raised before him in writing at the objections stage. To do so, would work an injustice on the solicitor, as she did not have the opportunity to comment on that objection before the Taxing Master and the Taxing Master was given no opportunity to give his considered ruling on that objection. Thus it was submitted that the Court should rule out this ground of objection to the Taxing Master's ruling.
23. Without prejudice to that submission, counsel further submitted that even on the merits, this point was without substance. It was based on a misunderstanding of how the Taxing Master had actually arrived at the ultimate instructions fee allowed by him of €165,000. It was submitted that the Taxing Master has adopted the correct approach as set down by the Supreme Court in *Sheehan v. Corr* [2017] 3 I.R. 252, where it was made clear that the assessment of an instructions fee based on a time summary was but one factor to be taken into account. In assessing the instructions fee the Taxing Master still had to have regard to the overall circumstances of the case and in particular to the factors outlined in section 27 of the 1995 Act and the matters set out in Order 99, rule 37(22)(ii). It was clear from paragraphs 71 *et seq* that the Taxing Master had done that when arriving at the figure that he did for the instructions fee in paragraph 73 of €165,000.

24. It was submitted that in these circumstances, the conclusion of the Taxing Master at paragraph 73 of the correct instructions fee was not in error, notwithstanding an apparent incorrect headline figure referred to in his calculation carried out earlier at paragraph 66. It was submitted that it was clear that the figure ultimately allowed took account of the time billing assessment as just one element in the equation, but that there had been many other factors as outlined in the ruling, which had gone into the mix in enabling the Taxing Master to arrive at his assessment of the appropriate instructions fee, which he had done in paragraph 73. In these circumstances it was submitted that the Court should not disturb the ruling of the Taxing Master in relation to the allowable instructions fee.
25. The second ground of complaint raised on behalf of the plaintiff was in relation to the absence of the solicitor's original file in the case. It was submitted on behalf of the plaintiff that she had not received a fair hearing before the Taxing Master, as the original solicitor's file had not been made available to her or the Taxing Master. However, it was conceded that the file had been made available to her late in the taxation process. It was further submitted on behalf of the plaintiff that the absence of the original file constituted a breach of the Order made by Kearns P. on 7th February, 2012. That was the Order which gave the solicitor liberty to come off record on behalf of the plaintiff. It further ordered that the solicitors were to provide the file in the matter to the plaintiff, or to a firm of solicitors nominated by her. It went on to direct that the solicitors were to provide the plaintiff with the Bill of Costs and that such costs were to be taxed in default of agreement. It further provided that the plaintiff was to pay to the solicitors the costs upon agreement, or following completion of the taxation.
26. It was submitted on behalf of the plaintiff that due to the absence of the original files of the solicitor, the plaintiff in her capacity as a lay litigant was deprived of the opportunity to properly consider the whole of her files in the context of the taxation process. It was submitted that that was a clear denial of her right to due process and constituted an error in principle on the part of the Taxing Master. It was further submitted that that was even more relevant because the applicant had made fundamental objections to the overlapping aspects in the Bill of Costs.
27. It was pointed out that while at paragraph 50 of the ruling the Taxing Master had found that, notwithstanding the deficiencies in the correspondence file, he was satisfied that he had been provided with sufficient documentation and explanations to enable him to assess the instructions fee as between solicitor and client; the applicant had never been afforded the opportunity to fully consider those files and make observations on same to the Taxing Master.
28. In response to that assertion, counsel on behalf of the solicitor referred to the following facts: firstly, the entire file had been made available to the legal costs accountant who had been employed by the plaintiff to advise her in advance of the taxation process; that had been accepted by the plaintiff; secondly, it had been accepted by the plaintiff that the entirety of the file had been furnished to her at a late stage in the taxation process, while the solicitor did not accept that that was a correct assertion, it was nevertheless an

acceptance that the plaintiff did have the entirety of the necessary documentation available to her during the taxation process. Counsel further pointed out that if the plaintiff was of the view that there had been a breach of the Order made by Kearns P. in February 2012, she had ample time in advance of the commencement of the taxation process to seek the appropriate remedy from the High Court; however, she had not done so. She had not made an application for any specific Order from the Taxing Master that documents be produced, nor had she sought an adjournment of the hearing before him so that such documents could be provided to her.

29. Furthermore, insofar as she asserted that she had been denied due process at the hearings held before the Taxing Master, that was contradicted by her closing remarks at the end of the hearings, where she had thanked the Taxing Master for giving her a fair hearing and for his courtesy and patience in the matter; see transcript of hearing for 15th April, 2016, at page 13.
30. Counsel further submitted that while it had been noted by the Taxing Master that certain correspondence was missing from the file that was before him, there had been a dispute between the parties as to why that had occurred. The solicitor had maintained that they had supplied all the documentation to the plaintiff's new solicitor, but that he had failed to return all of the correspondence to them and that accounted for the missing documents. That was hotly contested by the plaintiff. The Taxing Master had stated that he was unable to resolve the dispute as to who was responsible for the missing documentation, however he was satisfied that he had sufficient material in the documents before him and from the explanations furnished by the solicitor, to enable him to carry out a thorough and fair assessment of the instructions fee due to the solicitor. It was submitted that in these circumstances, there was no substance in this complaint made on behalf of the plaintiff. In particular, she had not established that there had been any prejudice to her by the alleged absence of any documentation.
31. The third ground raised by the plaintiff was in relation to the solicitor's instructions fee and the fee allowed to senior counsel for attendance at a mediation, which was held on 6th July, 2011. That was a lengthy mediation, but was ultimately unsuccessful in achieving a resolution of the plaintiff's three cases against the defendant.
32. It was submitted on behalf of the plaintiff that, having regard to a letter which had been sent by the solicitor on 15th April, 2011, it had been agreed between the plaintiff and the solicitor that her total exposure to costs in respect of the mediation would be capped at €10,000. In that letter, the solicitor indicated that she would have to consider very carefully whether she and her firm were prepared to continue to act for the plaintiff in the matter. The letter went on to state that the plaintiff had indicated that she wished to proceed with a mediation in respect of her cases against the defendant. In the letter, the solicitor indicated that she would be willing to continue to act for the plaintiff and in particular in relation to the mediation on a number of conditions, one of which was as follows:

"That you immediately put us in funds €10,000 to cover your half share of the mediator's fee and the balance to be shared between this firm and counsel in respect of the work done in respect to the mediation (I estimate that your half share of the mediator's fee will be between €3,000 and €5,000)."

33. The letter went on to state that if the plaintiff was willing to proceed on the terms set out in the letter, the solicitor would expect on her return from holiday on 27th April, 2011, that the plaintiff would have put them in funds and would have *"confirmed that you agree to the above terms"*. If that was done, she would then proceed to set up the mediation.
34. It was submitted on behalf of the plaintiff that as a result of that letter, there was a clear agreement between the parties that the plaintiff's exposure to costs on the mediation would be capped at €10,000. In compliance with the agreement, the plaintiff had paid 50% of the mediator's fee, being €3,000. Accordingly, it was submitted that her only remaining exposure to costs was in the sum of €7,000 and that on that basis the Taxing Master had erred in allowing the sums which he had done to the solicitor and senior counsel in respect of their mediation fees.
35. In response, Mr. Keating B.L. pointed out that the plaintiff's objections to the fees allowed by the Taxing Master in respect of the mediation, had shifted over time. Initially her objection had been based upon the assertion that senior counsel was not required. It was later asserted in a letter dated 22nd July, 2015, that senior counsel was retained in place of the solicitor with whom the plaintiff's relationship had deteriorated. Finally, the plaintiff had confined her objection to the alleged agreement in relation to the capping of her exposure to fees in respect of the mediation.
36. Counsel submitted that addressing the objection which the plaintiff had finally settled on, it was submitted that a true interpretation of the letter from the solicitor dated 15th April, 2011, did not in fact contain any offer or agreement that the plaintiff's liability for fees would be capped at €10,000. Counsel further submitted that it was not necessary for the Court to decide this question of interpretation, because it was clear that the plaintiff had expressly denied that there was any such agreement. This was due to the fact that, as set out at paragraph 9.1 in the Objections ruling delivered by the Taxing Master, in a letter dated 22nd July, 2015, from the plaintiff to the Taxing Master, under the heading *"Costs relating to mediation"* the plaintiff had stated: *"I did not agree to lodge the requested fee of €10,000 to McCann Fitzgerald as I saw no role for them in the mediation process apart from agreeing their own fees"*. Based on that the Taxing Master had reached the view that any suggestion of an agreement as to the fees of solicitor and counsel had been expressly repudiated by the plaintiff and therefore the items required to be taxed. Counsel submitted that that conclusion was entirely reasonable and was supported by the evidence. The Taxing Master had gone on to state that there was no evidence that any agreement as to fees was ever in place, nor was such agreement asserted by the plaintiff before him until the objection stage of the taxation process.
37. Counsel further submitted that as the only objection raised to the fees allowed by the Taxing Master in respect of the mediation was based on the alleged agreement, if the

Court held with him on that aspect, there was no other basis on which the fees so allowed by the Taxing Master had been challenged and therefore they should stand.

38. The fourth point raised by the plaintiff at the objection stage was that the plaintiff had been furnished with an estimate of fees by the solicitor after the matter had been set down for hearing, but before it proceeded to trial. The Bill of Costs ultimately submitted by the solicitor provided for an instructions fee that was some five times in excess of the original estimate provided to the plaintiff. It was submitted that no reason or explanation had been provided by the solicitor in relation to the enormous differential between the instructions fee as estimated and that claimed in the Bill of Costs. The plaintiff was of the view that, without any agreement, the solicitor had imposed a "*success type fee arrangement*" on her. She submitted that the Taxing Master had no jurisdiction to uphold any such agreement without her consent.
39. On behalf of the solicitor, it was submitted that this point had not been argued before the Taxing Master in the taxation. Nor was it an objection raised before the Taxing Master and had not been dealt with in his original taxation ruling. It was mentioned only in the Objections ruling at paragraph 14, because the plaintiff had raised the point without warning at the end of the process. It was submitted that the solicitor had never been given an opportunity to make any substantive submissions on it, or to tender any evidence during the taxation process relating to this issue. For that reason, it was submitted that the point could not form part of the review by the Court.
40. Without prejudice to that assertion, Counsel stated that the plaintiff's assertion that the fee sought in the Bill of Costs represented a success fee arrangement and that the Taxing Master had no jurisdiction to uphold such an arrangement without her consent, was grounded on the unsustainable proposition that a letter of fee estimate provided by a solicitor forecloses a taxation of costs. It was submitted that the plaintiff, who bears the burden of proof in the review, had provided no evidence or authority for the proposition that the Taxing Master had no jurisdiction to assess the instructions fee in the context of the letter of fee estimate.
41. Counsel further submitted that the conclusion reached by the Taxing Master at paragraph 14.4 of the Objections ruling was entirely reasonable. The Taxing Master had found that estimates are not binding and his function was to assess the costs as ordered by the Court, having regard to section 27 of the 1995 Act and all other relevant statutory provisions. It was submitted that that was the correct approach and as such, the existence of the fee estimate did not preclude the Taxing Master proceeding to determine the appropriate instructions fee payable to the solicitor.
42. The fifth and final ground of objection raised on behalf of the plaintiff was in relation to the sum that had been allowed in respect of postage/photocopying. It was submitted that during the taxation, the plaintiff had identified circumstances where no justification whatsoever had been demonstrated with respect to the amounts claimed by way of postage. In the course of the taxation, some of these amounts which had been claimed for postage, were subsequently claimed as photocopying expenses. It was submitted by

the plaintiff that no justification for the sums sought had been provided by way of evidence before the Taxing Master. This served to heighten her concerns that there had been considerable overlapping of charges imposed upon her from one case to the other. On this basis, she claimed that the fee allowed of €2,000 was unreasonable, as was the additional sum of €4,230.15 because it related to photocopying done on related cases, and both ought to be set aside.

43. On behalf of the solicitor it was submitted that the plaintiff had been somewhat disingenuous in referring to this item simply as "*postage*". She was well aware that the outlay in question was in respect of "*postage, telephone calls and sundry outlay*". She was also well aware that the item actually related to photocopying/printing costs and not to postage in the ordinary use of the word. Accordingly, the plaintiff's assertion that the sum originally claimed of €15,000 under this heading, which the plaintiff alleged amounted to nine letters per day for every day of the six years and three months of the retainer, was most disingenuous.
44. Counsel stated that a clear evidential basis for the amount claimed had been set out in the affidavit sworn by the solicitor on 6th July, 2018, which evidence had been referred to and discussed by the Taxing Master at paragraphs 13.2 and 13.9 of his Objections ruling. In summary, that affidavit set out that significant photocopying had taken place in preparation for the trial of the action and a document had been exhibited which demonstrated time entries referring to photocopying work actually carried out.
45. Furthermore, the plaintiff appeared to be under a misapprehension in relation to the codes that appeared on the summary of photocopying. She was of the mistaken view that as there were different codes appearing thereon, these related to different cases and therefore there was an overlapping of charges between one case and the other. However, that was incorrect. The codes were operator codes and merely identified who had done the particular photocopying.
46. It was submitted that there was ample evidence before the Taxing Master to support his ruling that it was appropriate for the solicitor to recover €2,000 in respect of this item as set out at paragraph 13.5 of the Objections ruling. Further, it was submitted that the sum of €4,230.15 which the Taxing Master had also allowed at paragraph 13.13, was completely justified for the reasons set out by the Taxing Master.

Conclusions

47. Having considered the documents submitted in this case, the rulings of the Taxing Master, the submissions of counsel and the authorities on behalf of each of the parties, the Court has come to the following conclusions on the grounds of objection raised by the plaintiff in this review of taxation. It will be helpful to begin by looking at the provisions in the rules which relate to a review of taxation. When a Taxing Master has given his initial ruling on a Bill of Costs submitted by a solicitor, a party dissatisfied with any aspect of that ruling can then take steps to have a review of taxation. That is provided for in Order 99, rule 38 which provides a means by which a party dissatisfied with the taxation of costs can object to the ruling of the Taxing Master in respect of various items considered in the taxation.

Order 99, rule 38(1) requires that objections are delivered to the other party and carried in before the Taxing Master in writing and that those written objections shall specify *"a list in a short and concise form the items, or parts thereof, objected to and the grounds and reasons for such objections"*.

48. The rules further provide that once those requirements have been complied with, the Taxing Master shall reconsider and review his taxation upon such objections and he may receive further evidence in respect thereof and if so required by any party, he shall state in writing the grounds and reasons for his decision thereon and any special facts or circumstances relating thereto. Thus, it is envisaged that the role of the Taxing Master is a two stage process, the second part of the process being engaged once objections are carried in in respect of his initial ruling. The nature of this process was considered by Laffoy J. in *D.M.P.T. v. Moran* [2015] 3 I.R. 224, where the learned Judge stated as follows at paragraph 46:

"The role of the Taxing Master under r. 38 must be considered against that background. His role is 'a second stage of the taxation but part and parcel of the taxation', as Geoghegan J. stated in Gannon v. Flynn [2001] 3 I.R. 531 at p. 534. It is a second stage which only comes into play if the dissatisfied party brings in objections. The objections must be in writing and the grounds and reasons for the objections must be set out. When that is done within the stipulated time limit, the dissatisfied party may apply to the Taxing Master to 'review the taxation' in respect of the relevant items."

49. The rules go on to provide that there is then a further stage in the process, whereby a party who is dissatisfied with the decision of the Taxing Master as to any items which have been objected to as aforesaid, or with the amount thereof, may within 21 days from the date of the determination of the hearing of the objections, or such other time as the Court or the Taxing Master may allow, apply to the Court to review the taxation in respect of the disputed items and the Court may thereupon make such order as may seem just. That is the jurisdiction under which this Court must consider the grounds which have been raised by the plaintiff in respect of the Objections ruling made by the Taxing Master in this case.
50. Section 27(3) of the Courts and Court Officers Act, 1995 is also relevant in relation to the Court's jurisdiction. Insofar as it deals with a review of a decision of the Taxing Master of the High Court, it provides as follows:

"(3) The High Court may review a decision of a Taxing Master of the High Court [...] to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master [...] has erred as to the amount of the allowance or the disallowance so that the decision of the Taxing Master [...] is unjust."

51. Turning now to consider the first ground of review as submitted by the plaintiff, being the misquantification point as described earlier in this judgment; the Court is satisfied that

the preliminary objection raised by Mr. Keating B.L. on behalf of the solicitor is well founded. It is well settled in Irish law that the High Court when carrying out a review of taxation under the jurisdiction conferred on it by the provisions outlined above, cannot entertain a review on grounds that were not brought in before the Taxing Master at the objections stage.

52. In *Re Walshe* [1962] 96 I.L.T.R. 173, Budd J. stated as follows in relation to this principle:

"It has however been contended that the Court is not confined in its review of the taxation to considering the grounds and reasons for the objections stated or the objections carried in before the Taxing Master but can consider other and fresh grounds not argued before the Taxing Master.

It seems to me that on a consideration of the three sub-rules in question that the latter contention of the respondent cannot be correct. The proper person to tax a Bill of Costs is the Taxing Master, an official with very specialised knowledge in such matters. Save as to the matters objected to, his certificate is final and conclusive. The power of the Court is to 'review' the taxation as to any item that may have been objected to. If the Court were to consider other new and fresh grounds not taken on the objections before the Taxing Master, the Court would be acting as a tribunal of first instance and such a course is not in my view contemplated by the sub-rules in question and one that would seem to be tantamount to usurping the functions assigned to the Taxing Master.

Furthermore another strange result would ensue. The application provided for in sub-rule 66(3) is one for a review. If the Court were on the hearing of such an application to consider new and fresh grounds of objection and uphold them, the Court would in fact be overruling the Taxing Master on grounds and reasons that were never before him and never considered by him.

It is moreover conceded by both parties that the Court can only review the Taxing Master's findings where he has gone wrong in principle. I cannot see that it would be possible for the Court to say that the Taxing Master had gone wrong in principle in matters not before him and on which he could therefore not have made a finding. On a fair reading of sub-rule 66(3) read in conjunction with sub-rule 66(1) and 66(2) it seems to me that the application to review provided for in that sub-rule is confined to a review of the objections and the grounds and reasons therefor as stated in the objections and grounds as carried in before the Taxing Master."

53. While the Court in *Walshe* was considering the provisions of Order LXV, rule 66(1), (2) and (3) of the Rules of the Supreme Court 1905, those rules are in almost identical terms to those set out at Order 99, rule 38(1), (2) and (3) of the current rules, such that the dicta of Budd J. are applicable to the circumstances in this case.

54. In *O'Sullivan v. Hughes* [1986] I.L.R.M. 555, Blaney J. reached a similar conclusion under the current rules. He stated as follows:

"There is a further reason also why I cannot accept either of the submissions advanced on behalf of the Plaintiff. It was decided in Walshe, In Re [1960] 96 I.L.T.R. 173 that a party seeking a review of Taxation is confined to the grounds of objection made before the Taxing Master. In the present case the sole ground of objection made before him was that the town agent's charges constituted outlay which had to be incurred by the Plaintiff's Solicitors and for that reason should be allowed. There was no reference in the grounds to this being a special case within O. 99, r. 13(2) or to Item 21 having to be disallowed because of duplication. Accordingly, it is not open to the Plaintiff to rely on either of these grounds on this review. The Plaintiff is confined to the ground that the town agent's charges constitute outlay properly incurred by the Plaintiff's Solicitors."

55. In the course of argument, it was conceded by counsel on behalf of the plaintiff that the plaintiff had not raised the quantification point in the objections carried in to the Taxing Master in respect of his initial ruling. This was due to the fact that the plaintiff had not spotted the alleged error until after the Taxing Master had delivered his Objections Ruling. It was submitted that as the plaintiff had acted in the taxation as a lay litigant, the Court should extend her considerable leeway on that account and therefore she ought to be allowed raise this ground of objection in the review of taxation carried out by this Court. While it is certainly true that the High Court and indeed other courts, will often prevent the rules of court and other procedural rules being implemented in a harsh manner towards a person who is not legally represented and who therefore is acting as a lay litigant before the court, that does not entitle the court to disregard the rules completely.

56. In *Burke v. O'Halloran* [2009] 3 I.R. 809, Clarke J. stated as follows at para. 33:

"In saying that, it does have to be noted that a party who chooses to represent him or herself is no less bound by the laws of evidence and procedure and any other relevant laws, and by the rulings of the court in that regard, than any other party. Where a party chooses to represent him or herself and where that party fails to abide by directions of the court concerning the manner in which the case should be conducted in accordance with procedural, evidential and any other relevant law, then the court must take whatever action is appropriate to deal with any such failure."

57. In *Duffy v. Clare County Council* [2013] IEHC 51, Peart J. made the following comments in relation to the position of a lay litigant, who pleaded the fact that he was unrepresented as an explanation for his delay and his consequently being out of time to raise certain objections in relation to environmental issues, in the following terms:

"In that regard, the Court must of course consider the position of a personal litigant who does not have the benefit of solicitor and Counsel to help him to formulate his claim and prepare the necessary documentation. But there must be some limit to that tolerance, as otherwise it has the effect of providing different rules to different litigants depending on whether or not they have legal representation. That is not permissible."

58. The Court is satisfied that the law is clear that a party cannot raise new grounds of objection in a review of taxation before the High Court. The objections must have been brought in in writing before the Taxing Master at the Objection stage and must have been ruled on by him before this Court can review them. The Court is further satisfied that it is settled at Irish law that the Court cannot enable a party to ignore the rules, or act in contravention of the rules, merely because he or she chooses not to have any legal representation at the time of the process under review. As it is accepted that the quantification point was not raised before the Taxing Master at the objections hearing and therefore was not ruled upon by him in his Objections ruling, it cannot be raised by the plaintiff in this review of taxation.
59. Insofar as there was a vague suggestion that because the Taxing Master had referred to certain aspects of the instructions fee in his Objections ruling, that this enabled the plaintiff raise the quantification point; the Court is satisfied that that is not correct. While there was some reference to the instructions fee and the methodology which had been adopted by the Taxing Master in his assessment of same at paragraph 8 of the Objections ruling, this was not sufficient to encompass the point now being sought to be made on behalf of the plaintiff in relation to the quantification issue. As already noted, it was accepted that the plaintiff had not raised that issue at the Objections hearing and could not have done so, because it was accepted that she only spotted the alleged error after the Taxing Master had delivered his ruling on the objections.
60. In relation to the submission that Order 99, rule 38(4) permits the Court to admit new grounds of objection, the Court is of the view that that provision in the rules does not support that contention. It is quite clear that Order 99, rule 38(4) merely allows the Court to permit further evidence to be brought in on grounds of objection that were previously raised before the Taxing Master. That sub-rule only relates to evidence, it does not encompass the bringing of new grounds of objection at the review of taxation by this Court.
61. For the reasons stated herein, the Court rules that the plaintiff cannot raise the quantification issue in this review of taxation, same not having been part of the objections brought in by her in relation to the original ruling made by the Taxing Master.
62. Even if the Court is wrong in that conclusion, the Court is further of the view that there is no actual substance in this point. While it may well be arguable that the Taxing Master made an error in using the headline figure for total time charges of €253,755 in paragraph 66 of his original ruling, having regard to the assessment made by him at paragraph 45 of the same ruling, it is clear that in reaching his assessment of the appropriate instructions fee the Taxing Master did not just proceed on the basis of the timesheets that had been submitted, but took into account other relevant factors, as he was obliged to do having regard to the decision of the Supreme Court in *Sheehan v. Corr*. It is clear from his ruling at paragraphs 70 et seq, that he looked at a number of features that were specific to this case. In addition, he also made allowance for the possibility of an additional overlap of work over and above that which had been allowed for in the

voluntary reduction of 30%. Thus in arriving at the figure which was allowed as the proper instructions fee, any error that there may have been in the headline figure used under the time billing section, was not that significant, as it was but the starting point for the calculation of the fees on a time basis, which itself was but one of the factors that were taken into account by the Taxing Master when assessing the appropriate instructions fee.

63. Accordingly, it cannot be said that there was definitely an error made by the Taxing Master which led to an overstatement of the figure ultimately allowed as the instructions fee. In these circumstances, the Court would not disturb the instructions fee allowed by the Taxing Master, even if it felt that it had the power to do so.
64. Turning to the second issue, the Court is of the view that there is no substance in the objection raised by the plaintiff in relation to the alleged absence of the original solicitor's file. In the Objections ruling, the Taxing Master stated that while the solicitor's file in its original state, was not at any stage of the taxation process presented to him for consideration, a file and documents associated with it, were considered at length during the taxation hearings. He went on to note that he had directed that further information should be provided by the solicitor. He referred to the subsequent receipt of the solicitor's book of explanations which was debated before him at hearings held on 14th and 15th April, 2015. In these circumstances he felt that there was no basis in fact to the plaintiff's assertion that the solicitor's file had "*suddenly appeared*" at a later stage. The Taxing Master stated clearly that the same file was at all times present, was opened and was available for consideration.
65. In addition, the Court notes that it was accepted by the plaintiff that at an earlier stage when she had a legal cost accountant, he had access to the original files held by her former solicitor. It was also conceded by her that the original file materialised towards the end of the taxation process, although as seen above, that assertion was contradicted by the Taxing Master. In addition, the Court notes that the plaintiff has not established any prejudice to her by any alleged deficiency in this regard.
66. The Court also notes that the Taxing Master himself was satisfied that he had adequate documentation and explanations before him to enable him to carry out a thorough and fair assessment of the appropriate instructions fee payable to the solicitor and also in relation to other items in the Bill of Costs. While it was argued on behalf of the plaintiff that the absence of the original file meant that she had not been given due process, that assertion was contradicted by the transcript of the hearing, wherein at the conclusion of the hearing, she was recorded as having thanked the Taxing Master for having conducted a very fair and courteous hearing. In these circumstances, the Court is of the view that there is no substance in this ground.
67. The third ground related to the alleged agreement between the plaintiff and her former solicitor that her exposure to costs on the mediation would be capped at €10,000. If there had been clear evidence that the plaintiff had agreed to the terms as set out in the letter from the solicitor dated 15th April, 2011, it might have been arguable that the true

interpretation of that condition as quoted earlier in this judgment, may have limited her liability for costs of the mediation to €10,000. However, it is clear from the letter sent by the plaintiff dated 22nd July, 2015, as referred to at paragraph 9.1 of the Objections ruling, that the plaintiff had not entered into any such agreement. The plaintiff stated in that letter, *"I did not agree to lodge the requested fee of €10,000 to McCann Fitzgerald as I saw no role for them in a mediation process apart from agreeing their own fees"*. Thus, it is clear that while the plaintiff did discharge 50% of the mediator's fees in the sum of €3,000, she did not comply with the condition in the solicitor's letter by lodging €10,000. In her subsequent letter, she specifically stated that she had not agreed to lodge that sum, as she saw no role for her former solicitor in that mediation. Accordingly, it is quite clear that there was no agreement between the parties arising out of the solicitor's letter dated 15th April, 2011. As the existence of such agreement was the only ground of objection in relation to the fees assessed by the Taxing Master in respect of the mediation, and as the Court is satisfied that there was no such agreement, it follows that there is no basis for making any finding that the Taxing Master was in error in allowing the fees that he did in respect of the mediation.

68. The fourth ground of objection concerned the fee estimate issued by the solicitor in advance of the hearing of the action. The Court is satisfied that the Taxing Master was correct in his finding that a fee estimate issued by a solicitor in advance of a trial, as to the likely instructions fee and other outlays which might be incurred in connection with the hearing of the action, is not binding on the solicitor in relation to the quantum of fees that may ultimately be charged. Nor does it prevent the Taxing Master assessing the costs as ordered by a court, such assessment being carried out having regard to the provisions of section 27 of the 1995 Act and the provisions of the rules.
69. This Court agrees with the views expressed by the Taxing Master at paragraph 14.4 of his Objections ruling. An estimate is not a document which prevents a solicitor or counsel charging a fair fee for work actually done by them at the trial of the action, or in connection therewith. It is quite simply an indication given at a particular point in time, as to what the solicitor thinks are likely to be the costs that will be incurred when future steps are taken. Its only real relevance to a taxation, would be that it might enable a party who has to pay costs, to argue that the fee actually charged was excessive, having regard to the fact that at some earlier time, the solicitor had furnished an estimate in respect of the likely cost of such work, which was far less than the sum actually charged in the Bill of Costs.
70. The fact that there may have been a discrepancy between the estimate of fees furnished by the solicitor and the fees ultimately charged by her in the Bill of Costs, does not necessarily mean that the solicitor had imposed a "success type fee arrangement" on the plaintiff. The plaintiff's submission that the Taxing Master had no jurisdiction to uphold any such arrangement without her consent appears to this Court to be somewhat misguided. The Taxing Master did not at any stage of his rulings purport to allow for any fees on the basis that there was some arrangement between the parties that a larger fee would be chargeable in the event that the plaintiff was successful in her action. There is

simply no evidence that the Taxing Master proceeded on that basis. Accordingly, there is no substance in this ground.

71. The final ground of objection raised by the plaintiff had two aspects to it. The first objection was in respect of the allowance made by the Taxing Master of €2,000 in respect of postage and other items. The solicitor had claimed the sum of €15,811.60. The Taxing Master ruled that as much of the photocopying had been done for the purpose of briefing counsel with documents during the course of the proceedings and for which separate, though much lower charges, had been claimed in the bill of costs by way of "*scheduled items*", a separate further charge could not be allowed. For that reason he allowed the sum of €2000 to cover the reasonable costs of postage, telephone calls and sundry outlays. He stated that the norm for allowances under this heading would usually range between €750 and €2500, depending upon the extent of the correspondence or other matters shown on the file. He stated that sundry outlays included day-to-day small expenditure and an allowance for telephone or other electronic forms of communication. The court is of the view that the Taxing Master acted entirely reasonably in allowing €2000 under this heading.
72. The second aspect concerned a claim for an additional allowance of €5640.20, which the solicitor stated had not been otherwise claimed. The Taxing Master ruled that while that charge related to photocopying, he could see no impediment in principle to the allowance of charges for photocopying, which it was clear had not been separately catered for elsewhere in the bill. He noted that the plaintiff had raised the issue whether all of the photocopying referred to in the printout that had been furnished by the solicitor, was actually related to her case. That aspect had been dealt with in the affidavit sworn by the solicitor and also in the solicitor's supplemental submissions dated 10th October 2018 at paragraph 7(a), which the Taxing Master accepted as representing a true reflection of the situation.
73. The Taxing Master accepted that an additional allowance had to be made under this heading to cover photocopying not already catered for in the bill. He was of the view that the copying charges which were claimed as being additional in nature, did in fact include documents specifically for inclusion, in or supplemental to the brief for trial. He noted that that brief was contained in nine boxes, as was referred to at paragraph 7(e) of the solicitor's supplemental submissions, and it was that which had to be photocopied.
74. The Taxing Master was satisfied that he had to disallow the plaintiff's objections under this heading and allow the solicitor's claim in part. He ruled that the solicitors were entitled to recoup the costs associated with photocopying substantial documentation which was provided to the client, as identified by the solicitors. He noted that substantial copying of documents also took place for the Court. In these circumstances he allowed 75% of the photocopying charges identified by the solicitor, which was valued at full value at €5640.20. On this basis he made an additional allowance of €4230.15 in favour of the solicitor.

75. The Court agrees with the Taxing Master that there is no impediment, in principle, to the allowance of charges for photocopying, which it is clear had not been separately catered for elsewhere in the bill. The plaintiff raised the issue as to whether all the photocopying was referable to her case, or whether it was due to overlapping with work done on other cases. There was evidence before the Taxing Master that the codes contained in the summary of photocopying, which the plaintiff believed may have indicated that the work related to photocopying in connection with other cases, were in fact codes identifying the operatives who had actually carried out the photocopying. In these circumstances, the Court is of the view that the allowance of 75% of the copying charges identified by the solicitor and valued at €5640.20 was reasonable, giving an additional allowance of €4230.15 in respect of photocopying. The Court is of the view that the Taxing Master acted reasonably in this regard and would not disturb his assessment in respect of this item.
76. For the reasons set out herein, the Court is not satisfied that any of the grounds of objection raised by the plaintiff have substance. Accordingly, on this review of taxation, the Court declines to disturb the taxation of costs as contained in the rulings given by the Taxing Master in this case.