

THE HIGH COURT

[2001 No. 16429P]

BETWEEN

PAMELA TREACY

PLAINTIFF

AND

DOLORES KANE

DEFENDANT

AND

LEN ROCHE AND HILARY ROCHE PRACTISING UNDER THE STYLE AND TITLE OF ROCHE AND McGUINN SOLICITORS

THIRD PARTY

Judgment of Ms. Justice Laffoy delivered on 24th day of April, 2013.**History of the proceedings**

1. These proceedings, as initiated by a plenary summons which issued on 7th November, 2001, were initially between the plaintiff and her mother, Mary Jo McDonagh (the Deceased), as defendant. The principal dispute to which the proceedings relate concerns the ownership of, and title to, a public house premises and dwelling house at Edward Street, Baltinglass, Country Wicklow (the Premises). As the case has evolved, three instruments have come to be at the core of the dispute.

2. The first instrument is a conveyance which bears the date 20th December, 1999 and was expressed to be made between the Deceased of the one part and the Deceased and the plaintiff (by her maiden name, Pamela McDonagh) of the other part (the 1999 Conveyance). On its face, the 1999 Conveyance was a voluntary conveyance by the Deceased of the Premises and the licence and business attached thereto to the Deceased and the plaintiff as joint tenants. The 1999 Conveyance was prepared by Roche McGuinn Solicitors and the first named third party (Mr. Roche) witnessed its execution by both parties. The plaintiff's position is that the 1999 Conveyance was actually executed on 21st September, 1999 and was subsequently post-dated.

3. The second instrument is an agreement dated 21st September, 1999 made between the Deceased and the plaintiff (the Side Agreement). The Side Agreement contained the following recital:

"By Conveyance of even date [the Deceased] has transferred a half interest in [the Premises] . . . to [the plaintiff] and henceforth they will hold the property as joint tenants in equal shares."

That recital does not correctly record the effect of the 1999 Conveyance, which was a conveyance of the entire property to the Deceased and the plaintiff as joint tenants. However, the relevance of that is for another day. What is significant about the Side Agreement for present purposes is that the parties to it mutually agreed that the Deceased would retain an exclusive right of residence in her existing residential apartment in the Premises, that they would agree between themselves the division of the profits of the business, that the plaintiff would expend money redeveloping the Premises and, significantly, that –

"The parties hereto agree for the consideration aforesaid passing on both sides that neither of them will in the future sever the joint tenancy so as to create a tenancy in common."

The position of the plaintiff is that the existence of the Side Agreement, the execution of which by both parties was witnessed by Mr. Roche, was not disclosed by the defendants in the proceedings and the solicitors acting for them for five years after these proceedings had commenced. Indeed, the expression used by counsel for the current defendant on the hearing of the application to which this judgment relates was that the Side Agreement had been "suppressed".

4. The third instrument was a conveyance dated 25th June, 2000 made between the Deceased of the one part and Mr. Roche of the other part (the 2000 Conveyance), which had the effect of severing the joint tenancy created in the Premises by the 1999 Conveyance, so that on its execution the Deceased and the plaintiff each became entitled to one undivided half share of the Premises.

5. One of the reliefs sought by the plaintiff in the endorsement on the plenary summons was a declaration that the 2000 Conveyance was void and of no effect. She also sought a declaration that, subject to maintenance and support of the Deceased, she was entitled to "all of the beneficial interest in [the Premises] for herself or for herself and her children".

6. In 2002 the capacity of the Deceased to defend the proceedings was in question and, by order of the Master of the High Court made on 27th November, 2002, Anthony McDonagh, Finola Eivers and the current defendant, Dolores Kane (Mrs. Kane), were appointed guardians *ad litem* of the defendant. The Deceased died on 2nd August, 2003 and subsequently by order of the Master of the High Court dated 4th November, 2004, both third parties, namely, Mr. Roche and Hilary Roche (Mrs. Roche), who were the executors named in the last will and testament of the Deceased, were substituted as defendants in the proceedings.

7. A statement of claim had been delivered on 1st September, 2003, after the death of the Deceased. An amended statement of claim was delivered on 24th June, 2005 after the proceedings were reconstituted. The relief sought by the plaintiff in the amended statement of claim was the same as the relief sought on the original plenary summons.

8. The then defendants (Mr. and Mrs. Roche, as executors of the will of the Deceased) delivered a defence and counterclaim in the proceedings on 20th April, 2006. As the preliminary objection therein discloses, the will of the Deceased had not been admitted to probate at that stage, because the plaintiff had lodged a caveat. From separate proceedings in relation to the estate of the

Deceased between Mrs. Kane, as plaintiff, and the plaintiff in these proceedings, as defendant (Record No. 2011/No. 809SP), which have been before this Court on a number of occasions, the current position in relation to the proving of the will of the Deceased's estate and how it evolved is disclosed. The will of the Deceased was eventually admitted to probate on 13th September, 2011. In the interim, by order of the High Court (Kearns P.) made on 28th February, 2011, in proceedings under the Solicitors Acts 1954 – 2008 (Record No. 2010/No. 87SA), Mr. Roche and Mrs. Roche were permitted to renounce their appointment as executors and trustees of the last will of the Deceased dated 26th August, 2000. Further, they were ordered to furnish the last will of the Deceased to Burns Nowlan, the solicitors on record in these proceedings for Mrs. Kane. On 13th September, 2011, the current defendant (Mrs. Kane) obtained from the Principal Probate Registry of the High Court what I assume to be a grant of letters of administration to the estate of the Deceased, with the said will annexed. However, the grant is not before the Court.

9. Subsequently, by order of the Court (Laffoy J.) made on 30th January, 2012, which order was made by consent, obviously of the plaintiff and Mrs. Kane, it was ordered that the title of the proceedings be amended by substituting Mrs. Kane, in her capacity as Legal Personal Representative of the Deceased, as the sole defendant in the proceedings in place of Mr. Roche and Mrs. Roche. The position, accordingly, was that from 4th November, 2004 until 30th January, 2012, Mr. Roche and Mrs. Roche, as executors of the will of the Deceased, were the defendants in the proceedings.

10. As the foregoing chronology indicates, there was serious delay in the prosecution of the proceedings. More than one notice of intention to proceed was filed on behalf of the plaintiff. There was a change of solicitor on each side. However, it is with the chronology from 2012 onwards that the Court is principally concerned in this judgment, although the past history is also relevant. The order of 30th January, 2012, in addition to reconstituting and amending the title of the proceedings, gave the plaintiff, with the consent of Mrs. Kane, liberty to deliver an amended statement of claim. The amended statement of claim was delivered on 30th January, 2012. Two additional reliefs were sought by the plaintiff in this amended statement of claim:

(a) a declaration that the plaintiff is entitled to an acre of land on property owned by the Deceased situate at Belan Street, Baltinglass for herself or for herself and her children: and

(b) damages.

It is important to emphasise that damages had not been claimed by the plaintiff against the Deceased or against her estate previously in the proceedings.

11. An amended defence and counterclaim was delivered by Mrs. Kane, as defendant, on 29th February, 2012.

12. On 15th March, 2012, Mrs. Kane, as defendant, issued a notice of motion for leave to issue and serve a third party notice on Mr. Roche and Mrs. Roche, practising under the style and title of Roche McGuinn, Solicitors. That application was heard on 26th March, 2012, when the Court (Laffoy J.) made the order sought. A third party notice dated 27th March, 2012 was issued pursuant to that order and, I assume, served on the same day. In the third party notice, Mrs. Kane, as defendant, claims to be indemnified by the third parties against the plaintiff's claim and the costs of the action and/or contribution to the extent of one hundred per cent or such other portion as to the Court shall seem meet on the grounds set out. In very broad terms, those grounds are, primarily, alleged negligence and breach of duty on the part of the third parties in advising the Deceased in connection with the 1999 Conveyance, the Side Agreement, and the 2000 Conveyance and in their dealings with the plaintiff and her legal advisers in connection with those transactions and these proceedings and in the conduct of these proceedings. The service of the third party notice gave rise to the application to which this judgment relates.

The application

13. On this application, on the notice of motion issued on 31st May, 2012, the third parties sought the following relief:

(a) an order setting aside the third party procedure against them on the grounds that the defendant had failed to comply with the provisions of s. 27(1)(b) of the Civil Liability Act 1961 (the Act of 1961);

(b) an order setting aside or striking out the order of 26th March, 2012 giving the defendant liberty to serve the third party notice on the third parties; and

(c) if appropriate, an order granting the third parties liberty to bring an application to strike out the plaintiff's claim for damages.

While the third parties have not abandoned the application for the relief set out in (c) above, it was not pursued at the hearing of the application. The third parties' application has been resisted by the defendant.

Separate plenary proceedings involving the third parties

14. There is in being a separate action between the plaintiff and Richard Treacy, as plaintiffs, and Mr. Roche and Mrs. Roche, practising under the style and title of Roche McGuinn, Solicitors, as defendants, (Record No. 2006 No. 2276P) (the 2006 Proceedings), which were initiated by a plenary summons which issued on 25th May, 2006. The solicitors acting for the third parties in these proceedings, J. A. Shaw & Co., entered an appearance on behalf of the defendants in the 2006 Proceedings on 30th June, 2007.

15. By notice of motion dated 11th April, 2012, the plaintiff in these proceedings sought an order pursuant to Order 49 of the Rules of the Superior Courts 1986 (the Rules) consolidating these proceedings and the 2006 Proceedings. That application stands adjourned pending the Court's decision on this application.

Grounds advanced on behalf of third parties for setting aside the third party notice

16. The first ground is alleged delay. In the affidavit grounding the application sworn by him on 30th May, 2012, Mr. Roche asserted that the claim for contribution and indemnity *via* the service of the third party notice on the third parties did not comply with the requirement of s. 27(1)(b) of the Act of 1961 to serve the third party notice "as soon as reasonably possible". Counsel for the third parties also submitted that in bringing the application for leave, Mrs. Kane, as defendant, had failed to comply with Order 16, Rule 1(3) of the Rules, which stipulates that application for leave to issue the third party notice shall, unless otherwise ordered by the Court, be made within twenty eight days from the time limited for delivering the defence, pointing to the fact that the first defence was delivered in 2006. Of course, the rule does not fix the relevant time period by reference to the delivery of the defence, but rather by reference to the time limited for delivering the defence, which was initially back in 2003.

17. Having regard to the very unusual factual circumstances which counsel for the third parties acknowledged exist in the background to this application, referring to the application giving rise to a "novel point" on which he was unable to find any authority, for the

reasons which I will outline later, I think the proper course is to consider the delay argument made on behalf of the third parties by reference to the requirement of s. 27 and to determine whether the third party notice was served as soon as was reasonably possible. In his affidavit, Mr. Roche averred that the claim for indemnity and contribution at this juncture is prejudicial to the third parties given the passage of time, the deaths of two of the principal witnesses, including the Deceased, and the difficulty in marshalling evidence and witnesses at this remove from the events. Those elements of alleged prejudice were not pressed by counsel for the third parties at the hearing of the application.

18. The second ground is alleged injustice to the third parties in pursuit of the claim against them. In his grounding affidavit, Mr. Roche alleged injustice in the manner in which the claim has been brought against the third parties in these proceedings. He alleged that the delay by the plaintiff in making a claim for damages is inordinate and inexcusable. He alleged that Mrs. Kane, as defendant, failed to challenge the entitlement of the plaintiff to amend the statement of claim and to include the claim for damages, despite there being good grounds to do so. He also alleged that Mrs. Kane, as defendant, has used the claim for damages as the basis to join the third party, having consented to an amendment of the pleadings to include the claim for damages, which procedure, he contended, was wholly unjust to the third parties. He specifically contended that the third parties are prejudiced because "their hands may now be tied in relation to an application to set aside or strike out the plaintiff's proceedings and/or the claim for damages on the basis of inordinate, inexcusable, unreasonable and unexplained delay", given that they are third parties, not defendants, in the proceedings.

19. In relation to the alleged injustice to the third parties, counsel for the third parties, obviously anticipating that counsel for Mrs. Kane would argue that the third parties could not have been joined as third parties in the proceedings in 2006 because at that stage they were the defendants in the proceedings, emphasised that there was no claim by the plaintiff for damages against the defendants (that is to say, Mr. Roche and Mrs. Roche as executors of the Deceased) in the proceedings at that stage. It was only when the plaintiff's claim for damages against Mrs. Kane, as defendant, materialised as a result of the amended statement of claim being delivered on 30th January, 2012 with the consent of Mrs. Kane, as defendant, that it became possible for Mrs. Kane, as defendant, to bring a third party claim against the third parties. The injustice alleged is that Mrs. Kane, as defendant, could have sought to have the proceedings struck out for inexcusable and inordinate delay and, in any event, she should not have consented to the delivery of the amended statement of claim. The third parties contend that it is unjust that they were brought into the proceedings ten years after the proceedings were initiated and that they are now "boxed in", not being in a position, as third parties, to have the plaintiff's claim struck out.

20. The third ground is that it is inappropriate and would do injustice to the existing proceedings, if the third party issue remained in the proceedings. In his grounding affidavit Mr. Roche averred that the central issue in these proceedings relates to the validity of the 2000 Conveyance and whether the plaintiff is entitled to the entire beneficial interest in the Premises. Having averred that the claim for damages is contingent on a finding against the defendant and a finding that damages are appropriate, given the inordinate delay by the plaintiff in pursuing the proceedings, he asserted that the joinder of the third parties is not necessary or warranted in relation to the net issue in the proceedings.

21. On this aspect of the application, counsel for the third parties contended that the Court has an inherent jurisdiction to set aside third party proceedings where they are inappropriate or where the presence of the third party is likely to disrupt the proceedings, citing the commentary in Delany & McGrath on "*Civil Procedure in the Superior Courts*" (3rd Ed.) at paragraph 9 – 56 to paragraph 9 – 58 and two authorities:

(a) the judgment of the Supreme Court in *Quirke v. O'Shea and CLR Oil Limited* [1992] ILRM 286; and

(b) the judgment of the High Court (O'Sullivan J.) in *Wicklow County Council v. Fenton* [2002] 2 I.R. 583.

The response on behalf of Mrs. Kane, as defendant

22. Counsel on behalf of Mrs. Kane, as defendant, characterised this application as an "audacious attempt" to set aside the third party proceedings, pointing out that the third parties had been the defendants in the proceedings from 4th November, 2004. The main focus by counsel on the factual basis of the dispute between the plaintiff and the defendant was on what, as I have recorded, was characterised as the suppression of the Side Agreement and what was alleged to be a conflict of interest on the part of the third parties. In particular, counsel referred to two letters exhibited in a replying affidavit sworn by Gerard F. Burns of Burns Nowlan, Solicitors, on 6th June, 2012. The first, which was dated 27th March, 2001 and pre-dated the initiation of these proceedings, and was from the plaintiff's then solicitors to Roche McGuinn, as solicitors for the Deceased, requested a "copy of the Deed which was executed contemporaneously by your client with the Deed of Conveyance dated 20th December, 1997 (*sic*)". The response of Roche McGuinn in their letter of 12th April, 2001 was:

"No Deed was signed contemporaneous with the Deed of Conveyance of 20th December, 1997."

It was submitted that such response was absolutely false and that it was not until 2006 that the parties whom counsel represents, whom I understand to mean the beneficiaries of the estate of the Deceased, discovered that they had been misled by Roche McGuinn in their suppressing of the Side Agreement. It was alleged that there was a conflict of interest, insofar as Roche McGuinn defended the estate of the Deceased against the claim of the plaintiff. It was alleged that they diminished the value of the estate by having agreed with the plaintiff that the Deceased would never sever the joint tenancy. It was submitted that, having thus acted in conflict of interest, Roche McGuinn cannot claim that they are being disadvantaged in being joined as third parties, when they contributed to the delay as far back as 2001.

23. Counsel for Mrs. Kane, as defendant, emphasised that she only became defendant on 30th January, 2012 and that she brought the motion to serve a third party notice on the third parties within eight weeks. Given that the third parties had been the defendants until eight weeks prior to the application to serve a third party notice on them, it was submitted that they cannot complain of delay. Further, given that the third parties had suppressed the Side Agreement, had been the defendants themselves for approximately seven years, and had been served within eight weeks of Mrs. Kane being substituted as defendant, it was submitted that they cannot complain of delay. On any application of the authorities referred to in Delany & McGrath (*op. cit.*), it was submitted that the third party notice was served "as soon as reasonably possible".

Conclusions

24. Section 27(1) of the Act of 1961 provides:

"A concurrent wrongdoer who is sued for damages or for contribution and who wishes to make a claim for contribution under this Part –

(a) shall not, if the person from whom he proposes to claim contribution is already a party to the action, be entitled to claim contribution except by a claim made in the said action, whether before or after judgment in the action; and

(b) shall, if the said person is not already a party to the action, serve a third-party notice upon such person as soon as is reasonably possible and, having served such notice, he shall not be entitled to claim contribution except under the third-party procedure. If such third-party notice is not served as aforesaid, the court may in its discretion refuse to make an order for contribution against the person from whom contribution is claimed."

Order 16, rule 1 of the Rules provides as follows:

"1. (1) Where in any action a defendant claims as against any person not already a party to the action (in this Order called 'the third-party') –

(a) that he is entitled to contribution or indemnity, or

. . . the Court may give leave to the defendant to issue and serve a third-party notice and may, at the same time, if it shall appear desirable to do so, give the third party liberty to appear at the trial and take such part therein as may be just . . ."

25. As Finlay C.J. pointed out in *Quirke v. O'Shea* (at p. 287), rule 16(1) was clearly made in part for the implementation of the provisions of s. 27. However, Finlay C.J. also stated (at p. 290):

"It is, in my view, of very considerable importance to emphasise that the question arising upon an application under O. 16, r. 1, is not a question whether a defendant shall be at liberty in general to claim from a concurrent wrongdoer contribution or an indemnity, but rather the procedural question as to whether it is appropriate that he should be entitled to claim in the action rather than by independent proceedings. I say this because I am quite satisfied, having regard to the provisions of s. 27(1)(b) which I have quoted, that if a defendant applies to the court to add the alleged concurrent wrongdoer as a party to proceedings, and if that application is refused, then the failure to serve a third party notice arising from such refusal could not constitute a valid ground for the exercise by the court of its discretion, to refuse, by reason of such failure, to make an order for contribution in separately instituted independent proceedings."

Because, on an application for leave to issue and serve a third party notice, and, similarly, on an application to set aside an order giving such leave, fundamentally, the Court is concerned with how a claim for indemnity or contribution may be advanced procedurally, rather than with the substance of the claim, it is necessary for the Court to exercise caution in commenting on the substantive issues between the plaintiff and the defendant and between the defendant and the third parties.

26. What is not in issue here is that the third parties, in the capacity in which it is sought to have them made third parties, that is to say, in their personal capacity, were not at any time parties to the plaintiff's action. That is because during the period between 2004 and January 2012, when they were the defendants in the proceedings, they were such defendants in their capacity as executors of the Deceased. Given the manner in which the proceedings were constituted through those years, the only persons who had standing to bring an application for leave to issue and serve a third party notice were Mr. Roche and Mrs. Roche as defendants in the proceedings. Taking a realistic view of the matter, it is hardly reasonable to expect that, even if it had been procedurally possible to do so, they would have applied to have themselves joined as third parties in their personal capacity. In any event, they did not do so. Therefore, I have come to the conclusion that the test to be applied on the proper application of s. 27(1)(b) on the very unusual facts on this case is whether Mrs. Kane, as defendant, served the third party notice on the defendants as soon as reasonably possible. She was not a party to the proceedings and she did not have standing to apply for leave to serve, or to serve, a third party notice until 30th January, 2012. Having regard to the timeline recorded in paragraphs 10 to 12 inclusive above, in my view, by serving the third party notice on 27th March, 2012, Mrs. Kane, as defendant, did so as soon as reasonably possibly. Insofar as is necessary, I declare that the application for leave to issue and serve the third party notice was brought in compliance with Order 16, rule 1(3).

27. Insofar as it is relevant, in my view, it has not been demonstrated that the third parties are prejudiced by being made third parties as late as the end of March 2012. The reality is that they were in the fray in one capacity or another from the very outset, that is to say, from the execution of the 1999 Conveyance.

28. It is in relation to the second ground advanced on behalf of the third parties, and the response of counsel for Mrs. Kane, that the Court has to exercise caution and avoid commenting on the substance of the proceedings. Bearing that in mind, the allegation of an injustice against the third parties by the inclusion of a claim for damages in the prayer for relief in the second amended statement of claim delivered on 30th January, 2012, in my view, can be assessed by comparing that statement of claim with the first amended statement of claim delivered on 24th June, 2005 and the then defendants' response to the earlier document.

29. In the earlier document, it was pleaded, in paragraph 8, as follows:

"In wrongful repudiation of the said agreement, and by equitable retraction of the Plaintiff's promised interests, the Deceased purported to deny the same by letter of 26th June, 2000, and has by deed dated 25th June, 2000, purported to sever the joint tenancy as a result of which the Plaintiff suffers or will suffer great loss."

The reference to "the said agreement" related to an agreement alleged to have been made in July 1998 between the plaintiff and the Deceased in relation to the transfer of the Premises to the plaintiff and the Deceased jointly. While there was no claim for damages in the prayer for relief in that statement of claim, there was a claim for further and other relief.

30. In the defence and counterclaim delivered on 20th April, 2006 by the solicitors then on record for Mr. Roche and Mrs. Roche, as defendants in the proceedings, it was denied that the Deceased acted in wrongful repudiation of the alleged agreement, which was denied. Further, it was denied that the plaintiff had suffered the alleged or any loss, and it was also pleaded that the plaintiff had failed to furnish any particulars of loss and, in the absence thereof, the defendants would object to any evidence being given at the trial of the action on behalf of the plaintiff to support the specific allegation.

31. Paragraph 8 of the first amended statement of claim has been replicated verbatim in the second amended statement of claim. It is true that paragraph 8 is followed by particulars of loss, which did not appear in the earlier document. However, the losses are not quantified.

32. In the light of that comparison, in my view, the submission advanced on behalf of the third parties that by the second amendment of the statement of claim to include an express claim for damages, which was consented to by the current defendant, and thereafter the initiation of a claim by the current defendant for indemnity or contribution, an injustice is perpetrated against the third parties is without foundation. The reality of the situation is that it has been clear since the third parties became defendants to the proceedings, as executors of the Deceased, in 2004 that the plaintiff was alleging that she suffered loss as a result of wrongdoing on the part of the Deceased. I consider it is reasonable to infer for present purposes that the third parties must have been conscious of the fact that the Court would award the plaintiff the appropriate remedy, if she was successful, and, indeed, I believe there is a recognition of this in the averment in Mr. Roche's affidavit which I have referred to in outlining the third ground (at para. 19 above).

33. Turning to the third ground, while it would have been open to the plaintiff, on the application of the current defendant to issue and serve a third party notice, to contend that the granting of such leave would be inappropriate and likely to disrupt the proceedings, and, if she had, the Court would have weighed that argument in the balance in determining whether to exercise its discretion in favour of the current defendant, in my view, having regard to the very unusual factual background, it is not open to the third parties to advance that argument on this application to strike out the third party proceedings. The reliance by counsel for the third parties on the decision in *Quirke v. O'Shea*, in my view, is wholly misconceived.

34. In *Quirke v. O'Shea* the plaintiff, a minor, was suing by his mother and next friend. His claim for personal injuries arose out of a collision between the car in which he was a passenger, which was being driven by his mother, and an oil tanker. The defendants, alleging negligence on the part of the mother in driving the car, sought leave to issue and serve a third party notice on her. At the time the infant plaintiff was about four and a half years of age. In addressing the procedural question against the underlying facts of the case, Finlay C.J. stated that, in the case of a claim by an infant plaintiff suing by parent and next friend, where an application is made to add the next friend as a third party, the Court is entitled to balance the disruption to the existing proceedings which could arise from such joinder against the convenience of trying all the issues in one action. On the facts of the case, Finlay C.J. concluded that it was probable that the disruption involved from the appointment of another or different next friend and the removal of one parent from the control of the infant plaintiff's action was not justified by the convenience of trying both issues together. Here, the third parties have not pointed to any disruptive factor which should militate against the Court exercising its discretion under s. 27(1)(b).

35. As is pointed out in *Delany & McGrath (op. cit.)* at para. 9 – 58, that balancing process was invoked by O'Sullivan J. in a different context in *Wicklow County Council v. Fenton* [2002] 2 I.R. 583. In fact, the issue arose there on an application by third parties to set aside the order joining them. The claim was a claim by the applicant pursuant to the Waste Management Act 1996 for orders against the respondents requiring them to take steps to mitigate or remedy pollution effects of dumping of waste material, including hazardous waste material, which they were alleged to have carried out. A major factor in that case was the fact that the statutory process contemplated a speedy and relatively simple statutory relief. O'Sullivan J. stated that the public interest in seeing the applicant's case speedily resolved must weigh heavily with the Court. Here, the third parties have not pointed to any analogous factor of relevance to the application of s. 27(1)(b).

36. Finally, nothing in this judgment should be construed as the expression of a view on any substantive issue, either in the main action or in the third party proceedings. The core consideration is what is the best way forward procedurally. The findings which have been made are not intended to, and should not, impinge on the entitlement of the third parties to defend the claim against them as they think fit.

Order

37. Having rejected each of the grounds advanced on behalf of the third parties, there will be an order refusing the relief referred to at (a) and (b) in paragraph 13 above.