Neutral Citation: [2014] IEHC 277

THE HIGH COURT

[2012 No. 328 SP]

BETWEEN

DAVID PATTON AND ROBERT PATTON

PLAINTIFFS

AND

DAVID RUDD AND ANDREW RUDD

DEFENDANTS

JUDGMENT of Mr. Justice Hedigan delivered on the 27th day of May 2014

1. The application is to dismiss the plaintiffs' claim on the grounds of inordinate and inexcusable delay on the part of the plaintiffs.

2. In their proceedings, the plaintiffs seek the reinstatement of a judgment against the defendants obtained by David Patton Ltd., undefended, and duly entered on 24th July, 2002, in the sum of iR£129,288.60 which is €164,162.66. This judgment was assigned by Deed of 19th November, 2011, by this limited company to the plaintiffs. Notice of this was served on the defendants on 19th November, 2002.

3. The limited company went into voluntary liquidation on 21st November, 2002. This judgment was subsequently registered as a judgment mortgage over the home, Bushertown House, of the first named defendant and his wife subject to a prior mortgage in favour of Roscrea Credit Union which had been registered on the Folio on 11 August, 2002.

4. On 23rd March, 2003, the plaintiffs were granted leave to issue execution on foot of this judgment. This appears to have been the only step taken to enforce the judgment.

5. By an agreement made on 22nd June, 2006, in an apparent effort to compromise with their creditors, the two defendants allege they came to an agreement whereby they settled any debt due by them to the plaintiffs by the payment of €30,000. This, they say, was sanctioned by Roscrea Credit Union and amounted to all they could get from the sale of the house after the Credit Union was satisfied. This agreement was evidenced in writing and was signed by the second named plaintiff.

By it, the plaintiff agreed that this payment was accepted in full and final settlement "of any claims that I may have against the Rudd family in respect of the judgment mortgage".

6. The defendants entered into this agreement by way of a kind of compromise with their creditors. The first named defendant, now a frail and elderly man, and his wife, sold their home to pay off their creditors and now live in rented accommodation. They are, apparently, in poor financial circumstances.

7. The plaintiffs argue that this settlement was only in respect of the discharge of the mortgage and not in satisfaction of all debts due on foot of the judgment. This settlement subsequently resulted in the judgment being marked as 'Satisfied' on 6th March, 2008. The plaintiffs claim this satisfaction was entered without their knowledge. It was not, they claim, until early January 2012 that they discovered this satisfaction when their solicitors attempted to recover on this judgment.

8. No explanation has been forthcoming for the delay by the plaintiffs in attempting to recover on the judgment they claim still existed even after the alleged settlement in 2006, and the marking as 'Satisfied' of the judgment in March 2008. They now seek to re-enter the judgment originally obtained in July 2002, and which clearly was in the contemplation of everyone in June 2006, when the settlement with their creditors was being arranged by the defendants.

9. The case cannot be resolved on its merits at this stage. The question for the Court is whether there has been inordinate and excusable delay on the part of the plaintiffs. It is agreed the only real delay is the pre-commencement delay. The plaintiffs' only explanation for the delay is that they claim to have been unaware that the judgment obtained in 2001, and entered on 24th July, 2002, had been marked as 'Satisfied' on 6th March, 2008, this, despite the complex negotiations that had occurred in 2006, between all the parties in 2006, and which had produced a settlement piece or documentation that seemed, on its face, on any reading, to have resulted in a form of compromise by the defendants with their creditors.

10. Subsequent confusion as to whether this satisfaction piece could be lodged should certainly have put the plaintiffs on guard if the case they seek to make is correct. Moreover, in March 2008, the 'Irish Independent' newspaper reported the final settlement of this dispute between the plaintiffs and the defendants. This report also noted that the "upcoming issue of Stubbs Gazette" was noting that the Rudds had "paid out" on the judgment.

11. If the case the plaintiffs made before the Court in this hearing is correct, then from 2006, at least, until2012, they have taken no step to enforce their judgment. No acceptable explanation has been offered to explain this delay. It is not logical to explain their failure to enforce the judgment by saying they did not know it had been marked 'Satisfied'. That, quite simply, makes no sense. At any time, but more particularly, in these difficult times when many people are trying to resolve their financial difficulties as best they can, it is unconscionable, without some acceptable rationale, clearly outlined in evidence, that the possessors of a judgment would lie inert for six years, whilst those against whom the judgment lay, tried to retrieve their financial stability only to have those plaintiffs re-emerge with such a claim, as herein, when they had regained some measure of stability.

12. The principles applicable to an application such as this are well known:

> (i) The starting point is to be found in the "implied constitutional principles of basic fairness of procedures". See *O'Domhnaill v. Merrick* [1984] I.R. 151, Henchy J. These support a jurisdiction to dismiss an action where it places "an inexcusable and unfair burden" on a defendant.
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> (ii) The jurisdiction is inherent where the delay has largely occurred prior to the commencement of proceedings and may be exercised where the defendant's right to fair procedures would be breached by allowing the proceedings to continue.

(iii) Where the delay is inordinate and inexcusable, the Court should act where the balance of justice requires it to do so. See *Primor plc. v. Stokes Kennedy Crowley* [1996] 21.R. p. 459.

13. Applying those principles herein, it is undoubtedly the case that there has been inordinate delay. In determining this, I must take into account the entire lapse of time since the original judgment was entered in 2002. The period of time that has elapsed covers twelve years during which the defendants' business collapsed and a compromise was sought to be achieved by the defendants with their creditors. This involved, *inter alia*, the first named defendant selling the home of himself and his wife in his efforts to satisfy his creditors. This is manifestly inordinate delay. Even were the Court to compute the delay from 2006, the same principle applies. The delay is inordinate.

14. As noted above, no acceptable or logical excuse has been proffered for this delay. That delay, until they acted in 2012, lies entirely at the door of the plaintiffs. So, where does the balance of justice lie? On the evidence before the Court, it lies with the the defendants. In my view, it would not be just, after a delay of at least six and possibly twelve-years, which the plaintiffs have allowed to elapse, that the defendants should now be faced with the trial of an action such as that now brought by the plaintiffs. It is undoubtedly a *de facto* continuation of a process commenced in 2001, and the mere fact alone of the inordinate delay of either twelve or six years is, in my judgment, conclusive of this application. The delay is inordinate and inexcusable and the balance of justice lies in preserving the defendants' basic constitutional right to fair procedures.

15. I will make an order pursuant to the inherent jurisdiction of the Court dismissing the plaintiffs' claim on the grounds of their inordinate and inexcusable delay. There will be an order in favour of the defendants for the costs of this application and for the costs of the proceedings herein to date.