



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 78

Kelly J.
Irvine J.
Mahon J.

Appeal Number: 2014/867

Article 64 Transfer

Margaret Brennan

Plaintiff

and

Thomas Flannery

Defendant/appellant

Ex tempore Judgment of Mr. Justice Kelly delivered on the 9th day of March 2015

1. On 19th November 2014 a division of this Court constituted by Mrs. Justice Finlay Geoghegan presiding with Ms. Justice Irvine and Mr. Justice Mahon sitting with her, directed that an issue be tried as to whether the first named defendant, Thomas Flannery, and the second defendant, Catherine Flannery, are personally liable for the damages and costs awarded by the High Court in an Order of 15th May 2013. That was an issue directed to be determined before any other issue on this appeal. That is the exercise that we have engaged upon since before lunch today and this is my judgment on the question posed by that Order.

2. In order to understand the background to the matter it is necessary to rehearse in some little detail the proceedings which were before the High Court. Mrs. Brennan commenced an action in 2003 against a series of defendants. The first three defendants were Thomas Flannery, Catherine Flannery and T and C Developments Limited. There were other defendants including the National House Building Guarantee Company Limited. Some few weeks ago a division of this court differently constituted to today's constitution, upheld an appeal which had been brought by the National House Building Guarantee Company Limited and reduced the entitlement of Mrs. Brennan to damages against that entity. It did so because there was an upper limit in the guarantee bond which was executed in respect of the dwelling which is at the heart of these proceedings and the trial judge wrongly awarded an amount in excess of that upper limit.

3. Today's matter arises from the same general background of fact but is different. What happened was that in November 1999 Mrs. Brennan entered into two agreements. She entered into an agreement with Mr. and Mrs. Flannery for the purchase by her of a site of land which is identified in the contract executed by her on that date and the consideration for the land purchase was a sum of £5,000.

4. On the same day she entered into what was called a building agreement. The building agreement on its face was made between her and T and C Developments Limited (the company) of Lake View, Lough Allen, Carrick On Shannon and Co. Leitrim. The contract price which was specified under that agreement was the sum of £80,000. Under the terms of that agreement the company was to build the house on behalf of Mrs. Brennan.

5. She contends that the house which was built was defective. She brought her action arising from that in the High Court. It was heard over a number of days by Mrs. Justice Dunne. As already indicated a few weeks ago we decided an appeal on the part of National House Building Guarantee Company Limited. That appeal was based upon a written judgment which was given by Ms. Justice Dunne dealing only with that aspect of the matter.

6. The making of the order against the other defendants, Mr. and Mrs. Flannery and T and C Developments Limited took place upon a later date on 15th May 2013. There was no written judgment given in that regard. It has to be said that such judgment as there is, is unenlightening because it amounts to a single sentence by the judge simply saying that she "*is going to give a decree in favour of the plaintiff as against all three defendants*" without any distinction being drawn between them or any basis for so doing being indicated.

7. There is already a body of case law on the administrative side which requires tribunals exercising judicial functions to give reasons for the decisions that they arrive at. I think no lesser standard is required of the Superior Courts. (See *A.A. v. Medical Council* [2003] 4 I.R. 302 and *Foley v. Murphy* [2008] 1 I.R. 619). I am not saying that a discursive judgment has to be given in every case. The vast majority of cases are dealt with on the basis of an ex tempore ruling but there must be sufficient reasons given so as to meet the standard which has been identified in a whole series of decisions in High Court and Supreme Court beginning with the decision of Mr. Justice Murphy of *Donoghue v. An Bord Pleanála* [1991] I.L.R.M. and following in its wake the judgment of Mr. Justice O'Neill in *Grealish v. An Bord Pleanála* and two judgments of my own, one in *Mulholland v. An Bord Pleanála* and the other in *Deerpark v. Aquaculture Appeals Board*.

8. The reasons have to be sufficient so as to give to a litigant such information as may be necessary and appropriate to consider whether there is a reasonable chance in appealing or judicially reviewing the decision: to arm such a person for such a hearing: to know that the decision maker has directed his mind to the issues and to enable the courts to review the decision. No such reasons were given in this case and it has not made the task of either the parties to the litigation or this court any easier.

9. What is clear on an examination of the transcript and the documentary material put before the trial court was that there were two quite separate and distinct agreements entered into. One was the land purchase agreement and the other the building agreement. Mrs. Brennan sued the two Flannerys and the company. The building agreement was with the company. The defects in the building which resulted in the decree were defects that were brought about as a result of failures on the part of the company. The only contractual nexus between Mrs. Brennan and Mr. and Mrs. Flannery was in respect of the land sale agreement for which they were paid £5,000. The company was paid £80,000. The whole notion of establishing a limited liability company is to produce the result that the liability of the persons who are the shareholders of the company is limited. That is the danger of contracting with a limited liability

company. But a company is a separate and distinct legal person from its shareholders and directors.

10. The thrust of the case which was made both in the pleadings and in evidence in the court below was that there was a breach of the building agreement on the part of the company. The judge in giving a decree for almost €90,000 against all three defendants clearly failed to make any distinction between the two individual persons, Thomas and Catherine Flannery, and the company of which they were the shareholders. The judgment also failed to make any distinction between the two quite separate agreements which were entered into. The only agreement that Mr. and Mrs. Flannery entered into was for the purchase of land. The agreement with the company was for the building of the house. The house was found by the High Court judge to be defective. Any remedy in respect of that lies against the company and not against Mr. and Mrs. Flannery.

11. In these circumstances in my view the question posed by this court on 19th November 2014 must be answered on the basis that the defendants, Thomas and Catherine Flannery, are not personally liable for the damages and costs awarded by the High Court on 15th May 2013. Therefore the question should be answered in that fashion.

Irvine J.: I also agree that the question raised for this court's determination should be answered in the negative. I am quite satisfied that there was no evidence from which the trial judge could have concluded that the first and second named defendants were liable for the damages which she ordered on 15th May 2013.

Mahon J.: I agree.