Neutral Citation Number: [2009] IEHC 564

THE HIGH COURT

2007 51 MCA

IN THE MATTER OF S. 160 OF THE PLANNING AND DEVELOPMENT ACT 2000.

BETWEEN

THE COUNTY COUNCIL OF THE COUNTY OF MEATH

APPLICANT

AND

CHRISTOPHER ROONEY AND IRISH HELICOPTERS LIMITED

RESPONDENTS

JUDGMENT of Ms. Justice Dunne delivered on the 21st day of December, 2009

The applicant in these proceedings sought an order pursuant to the provisions of s. 160 of the Planning and Development Act 2000, restraining the respondents and each of them, their respective or agents, licensees, or any person acting in consort with them . . . from carrying out any unauthorised development at lands at Trevet, Dunshaughlin in the Co. of Meath being the property comprised in Folio MH 35369F of the Register of Freeholders, Co. Meath. The matter came before me for hearing and following discussions between the parties I was informed that the proceedings had been compromised. One issue remained to be disposed of and that was the issue of costs of the proceedings. It was not contested that the applicant was entitled to an order for costs of the proceedings but it was contended on behalf of the first named respondent that the applicant was entitled to costs on the Circuit Court scale as these were proceedings that could have been commenced in the Circuit Court.

Counsel on behalf of the applicant argued that the applicant was entitled to costs on the High Court scale in circumstances where there was no evidence of any kind whatsoever before the court as to the rateable valuation of the lands comprised in the proceedings. On that basis it was contended that in the absence of such evidence the appropriate order to make was an order for costs appropriate to High Court proceedings.

It is correct to say that there is no evidence on affidavit in this case or otherwise as to the rateable valuation of the property comprised in Folio MH 35369F. I think it is fair to say that if the proceedings had been commenced in the Circuit Court, it would have been necessary to have such evidence in order to establish the jurisdiction of the Circuit Court to deal with the matter. This is one of those cases where the Circuit Court and the High Court have jurisdiction to deal with the type of application, but in the case of the Circuit Court, the Circuit Court being a court of limited jurisdiction, jurisdiction in such a case as this is shown by reference to the rateable valuation.

During the course of the submissions herein, I was referred to the provisions of s. 17 of the Courts Act 1981, as amended by s. 14 of the Courts Act 1991, which substituted a new s. 17 in the following terms:-

> "17(1) Where an order is made by a court in favour of the plaintiff or applicant in proceedings (other than an action specified in subsections (2) and (3) of this section) and the court is not the lowest court having jurisdiction to make an order granting the relief the subject of the order, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the said lowest court."

The remaining subsections of s. 17 deal with actions in which the damages fall within a particular range.

I was also referred in the course of the submissions to a decision of this Court in the case of *Kelly v. The Minister for Defence and Attorney General* (Unreported, High Court, 8th July, 2008) in which the provisions of s. 17(1) of the 1981 Act were considered. In the course of that decision I referred to the nature of s. 17(1) and to the policy behind s. 17 in the following terms:-

> "Designed by the legislature to impose a cap on costs that may be recovered by a successful plaintiff or applicant where the order made in his favour is made by a court which is not the lowest having jurisdiction to make the order granting the relief the subject of the order. I have already referred to a passage from the judgment of Hardiman J. in the case of *O'Connor v. Bus Atha Cliath*, in which he described the purpose of the statutory scheme contained in s. 17. Murray J. (as he then was) in the same case stated the following at pp. 493 – 494:-
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> > 'The relevant provisions are part of a statutory scheme whereby claims may be brought in different courts according to the level of their jurisdiction to give the relief sought by a plaintiff. It is clear that among the policy reasons for such provisions is that they facilitate the efficient administration of justice, and are of convenience to all the parties in bringing their cases, where appropriate, before courts of local and limited jurisdiction. In particular, in the present context, it will usually mean that lower costs are incurred by both the plaintiff and the defendant than if the proceedings had been brought to the higher court.
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> > It is clearly in the public interest that claims are in principle brought before the lowest court having jurisdiction to hear and determine the claim with a view to the proper and efficient administration of justice and for the purpose of minimising the cost of litigation generally and in particular for the parties. There is therefore an onus on a Plaintiff to bring the proceedings before the court having the

appropriate jurisdiction.'

> Bearing in mind the judgments of Murray J. and Hardiman J. in that case, there can be no doubt that the policy behind s. 17 is to compel plaintiffs to bring their proceedings in the appropriate jurisdiction in respect of the relief being sought and to encourage this by ensuring that the costs recoverable by a successful plaintiff in circumstances where the claim has been brought in a higher jurisdiction than that which is necessary, shall not exceed the costs that would be recoverable had the case been brought in the appropriate jurisdiction."

That particular case concerned a situation where the parties had settled the proceedings resulting in a payment of a sum of money to the plaintiff by the defendant. The sum of money involved was a sum which fell well within the jurisdiction of the Circuit Court. Indeed it fell within the range dealt with in s. 17(3) of the Act. The situation in this case is somewhat different given that the proceedings do not involve a claim for damages. However, s. 17(1) is applicable to the facts of this case.

During the course of submissions made to me on this point it was argued on behalf of the plaintiff that the defendant, if concerned about the issue of costs, could at any time in the course of the proceedings have made an application to remit the proceedings to the Circuit Court. No doubt that is so. It is an observation that could apply equally to the applicant.

This is a case in which the issue of costs has to be determined by the court. I am mindful of the objective and intention of section 17. This is not a situation like that which pertained in the case of *Kelly v. Minister for Defence and Attorney General*, as in that case, the parties themselves had reached an agreement on the issue of costs and in those circumstances it was not appropriate to apply the provisions of s. 17 of the 1981 Act and in particular the provisions of section 17(3). Here the position is somewhat different. The issue of costs is a live issue and one that has to be determined by the court. I have already set out the terms of s. 17(1) and it is mandatory in its terms. Given the point made on behalf of the plaintiff that there is no evidence before the court on this particular issue, it seems to me that there is one way to resolve that issue and that is by making an appropriate inquiry into the rateable valuation of the lands and premises at issue in these proceedings. If it follows as a result of that inquiry, that this is a case in which the Circuit Court would have jurisdiction, then obviously an order for Circuit Court costs should be made. In that event I have no hesitation in saying that it would be an appropriate case in which to certify for Senior Counsel having regard to the nature of the issues involved, but it does seem to me that the first matter to be clarified is the question of jurisdiction. I will hear the parties further on how that will be done.