Neutral Citation Number: [2012] IEHC 26

THE HIGH COURT

2008 124 S

BETWEEN

JOE DONNELLY

PLAINTIFF

AND

PATRICK JAMES WOODS

DEFENDANT

Judgment of Mr Justice Charleton delivered on the 26th day of January 2012

1. In 1999 Patrick James Woods, the defendant, and Kevin McKenna bought 18 acres of farm land near Monaghan town for about €168,000. Their plan was to develop this land for housing. Joe Donnelly, the plaintiff, was brought in as a financial adviser. Despite hearing evidence from all these mentioned, it remains puzzling as to precisely what Joe Donnelly did. Various parties were interested in developing the land. In the initial stages, in 1999 and 2000, St. Pancras Housing Authority developed a plan for moderately priced housing for its members. That plan was formalised by a firm of engineers and planning permission was granted by the local authority on the 14th November, 2000. An appeal was then entered and when this was advertised a firm of builders expressed an interest. They were allowed into the plan. Their architects, Teauge and Sally Partnership, of Cookstown, County Tyrone prepared and submitted a detailed reply to the observations made on the appeal. In the event, An Board Pleanála granted the appeal, thus refusing permission, on the basis that the relevant development plan did not encompass the site as part of the future plans to expand Monaghan town. There was then another application to the planning authority which failed. The only available option was a change in the development plan. The prospects of developing the site then became quiet as a wait of 3 to 4 years was expected before local authority members might change the development plan. There was concern by the developers, Patrick James Woods and Kevin McKenna, that the firm of builders might have gained some kind of interest in the fields. Any such worry was alleviated as the matter went into abeyance. As the wait continued property prices grew. Kevin McKenna disposed of half of his interest to a relation by marriage. Some ready cash was made available on the basis of a 50% interest on whatever profit from the sale that would ultimately take place. In late 2006, a different firm of builders became interested and the price of the property had by this stage climbed to €3.8 million. That was not the end of it. Others became interested. The fields were sold to a limited liability company and then onto another limited liability company for the purpose of development in a contract which closed on the 25th May, 2007, and which recorded a consideration of €4.435 million. This was an increase of a multiple of over 26 in eight years, or a 2,539.881 % increase.

2. None of this worked out. Patrick James Woods, the defendant, made a healthy profit after paying off his partner Kevin McKenna, but, as he said in evidence, he lost the millions of euros gained "twice as quick as [he] made it". The fields remain fallow, suitable for the raising of cattle; and the bank which lent the money, borrowed from foreign banks, in support of the paper accretion of apparent wealth, is now a burden on the Irish taxpayer.

3. Joe Donnelly, the plaintiff, claims that he had an express agreement with Patrick James Woods and Kevin McKenna to be remunerated in consideration for financial and consultancy services. In the statement of claim he pleads he would be paid 10% of the net profit achieved on the ultimate sale of these Monaghan fields. He asserts that in performance of the agreement he "provided professional services ... on a continuous basis on diverse dates between 1999 and December 2006". In the alternative, the plaintiff claims that he "provided the works and services as requested and the defendant took the benefit of these works and services thereby entitling the plaintiff to a reasonable sum in respect of such works and services on a *quantum meruit* basis". The defence traverses the plaintiff's claim and raises two special defences: that in reality the claim is on the basis of an interest in land; and that the claim is barred by virtue of s.11(4) of the Statute of Limitations 1957, which limits claims in contract to six years.

Issues

4. Having heard the evidence for both sides, it is agreed by counsel for the parties that the following issues should be isolated:

> 1. Was the engagement of the plaintiff on a "no foal no fee" basis related to the St. Pancras Association proposed development?
>
> 2. Was a definite percentage remuneration of profit from the ultimate sale agreed between the parties?
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> 3. Was there a contract between the parties, in the sense of one that is enforceable in law?
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> 4. Does the principle of *quantum meruit* entitle the plaintiff to some remuneration?
>
> 5. Does the Statute of Limitations 1957, apply to either head of claim as pleaded?
>
> 6. Does the Statute of Frauds (Ireland) Act 1695 (as amended), apply to an interest the plaintiff claims in land?

Contract

5. This case is not about an interest in land. It concerns, instead, a deal between businessmen to maximise their profits through pooling their interests and knowledge. It is not necessary for me to analyse the claim on the basis of the strictures of the Statute of Fraud (Ireland) Act 1695 (as amended). The plaintiff never had an interest in these Monaghan fields and on requisitions upon sale it would never have been necessary to refer to him as holding any title whether in law or in equity. The far ranging nature of what he alleges puts him outside the one year limit: *Hynes v Hynes* [1984] IEHC 48, (Unreported High Court, Barrington J., 21st December,

1984).

6. In evidence, Joe Donnelly told the Court that he was a financial consultant, qualified as such and entitled to put the letters QFA after his name through doing a recognised exam from a professional body. His VAT number is not on his headed notepaper. He gave evidence as to remuneration to the Collector General and said that financial transactions were exempt. Such work as he did in respect of the Monaghan fields must have amounted to professional advice and it is hard to see how this does not carry a VAT liability. Prior to this project he was friendly with Kevin McKenna, who gave evidence on his behalf. The bulk of his work on this matter was in meeting with the St. Pancras Housing Association in the years 1999 and 2000 and in negotiating and approving their plans for development. When asked as to what work he actually did, his answer was vague. A notice for particulars was raised prior to trial asking for details of professional services, seeking a written contract and demanding other appropriate details. No sufficient information was forthcoming. Discovery of documents yielded nothing on which a court might rely. When asked at trial as to how many hours were involved and as to the hourly rate he charged, the plaintiff could give no answer that was satisfactory. Possibly it is difficult to remember at this stage. Discovery in relation to meetings consisted of diary entries on five separate occasions simply noting a name. These are all in 1999. It is possible that on the 13th March, 2001, Joe Donnelly, Patrick James Woods and Kevin McKenna consulted with a solicitor as to possible liability to the builder who had shown a definite interest in the land by causing his architect to draw up plans on the appeal and the major application to the local authority. Thereafter, it is claimed on behalf of the plaintiff that the parties went back to his office. The evidence as to what agreement had supposedly been reached there as to the percentage remuneration for the services of the plaintiff is not sufficiently definite for the court to act on it. The evidence falls short of a probability. Nor is it possible for the court to regard the evidence as a definite 10% of profit deal as having been struck in his office as probable. Although a third party was interested, planning permission was an uncertain prospect into the future and the existing interested party was likely to be put off by the delay that would ensue. The evidence for the plaintiff was that because the owners of the fields had no disposable money they agreed to pay him on a percentage basis. What was that alleged percentage?

7. The reality is that this crucial part of an enforceable contract was left unspecified. Evidence has been given of various other deals with which the plaintiff was involved and these were evidenced by invoices. In one deal involving the financing of another project for €732,000, the sum claimed was €3,500. This amounts to about 0.478%. Other invoices for professional fees are on a modest basis; involving sums of €4,400, €3,130 and a fee of €15,000 on a financial arrangement of €300,000, a fee of 5%. None of these come close to 10%. Then there is the position of Kevin McKenna. He told me that he felt obliged to pay the plaintiff 10% of the half interest he sold to a relation by marriage. The remuneration there was on a notional full value of which he had a half interest. Three cheques were paid over by him to the plaintiff. On the 1st April, 2004 he paid €10,000; on the 14th December, 2006 he paid €10,000; and on the 30th May, 2007 he paid €70,000. No matter how one looks at the figures they are not close to 10% and are more like 5%. When Kevin McKenna was asked about this discrepancy his answer was that negotiation was done with the plaintiff at the time of the ultimate sale with money being paid earlier on the basis that his relation had paid him €200,000 for half of his half interest, of which the €20,000 earlier paid was on a 10% basis. This evidence is insufficient to establish a probability. There is a more fundamental problem, however.

8. The essential aspect of a contract is that the parties come together and agree what their obligations are. Not every single issue as to liability and performance needs to be foreseen and provided for. To dismiss a contractual claim on the basis of a missing term would be to undermine the business efficacy which the courts are obliged to give to commercial transactions on the basis that reasonable people will conclude a contract where what is essential to their obligations is defined and agreed. Certain matters will be essential. This depends on the nature of the obligations being undertaken through contract by the parties. In a contract for the sale of land, for instance, it is essential to nominate the parties, to sufficiently describe the land by reference to its location and the interest in it that is being disposed of and the price that is to be paid. Often times, much more than such bare terms will be specified by reference to fixed contracts published by professional bodies which are in each individual sale adapted to the needs of the vendor and the purchaser. Building and engineering bodies also publish standard form contracts and continually refine these based on experience; these documents will be replete with detail. Whereas this is desirable in avoiding all kinds of disputes later on, what is essential is that the parties to an agreement should not be left in doubt as to the substance of what they are to do in discharge of the obligation created by the contract.

9. Here, there is a problem. The nature of the services provided by the plaintiff to the defendant and his partner are left uncertain due to lack of documentation. This is compounded by an understandable vagueness in evidence by all of the parties who gave testimony; after the lapse of up to twelve years. If people put their obligations in writing, even through the exchange of letters, then there is at least something to refresh the memory and there may also be the clarity that written language can bring to the definition of obligations. All of that is absent in this case. The court is left uncertain as to the nature of the professional services provided by the plaintiff; what exactly this consisted of; how many hours were involved; and what the hourly rate of charge would be.

10. In the absence of a defined agreement as to remuneration, whether by reference to an hourly rate of charge or on the basis of a percentage profit share, no contract in law is concluded. As to the profit share that would normally be acceptable to the plaintiff, he gave evidence as to figures ranging between 1% and 10%. His normal rate of charge he said was 10%. Unless a custom of a trade or profession is established whereby the evidence supports a rate of charge claimed as notorious to the parties with whom the plaintiff dealt, or unless it is otherwise clearly specified, no contract enforceable in law is capable of being formed for professional services in the absence of agreement on remuneration. The absence of paper and the understandable vagueness of the evidence for the plaintiff cannot amount to a probability in the absence of such evidence. I cannot find the testimony in relation to the alleged meeting at the plaintiff's office of the 13th March, 2001 sufficient to supplant this unfortunate absence. Of itself, that kind of evidence is insufficiently strong to establish a probability.

Quantum meruit

11. An entitlement to be paid on a *quantum meruit* basis can be established where it is clear from the course of dealings between the parties that the claimant worked for the defendant on request and on the basis of a mutual understanding that the service provided would be remunerated. If there is absence of agreement as to rate, then despite their failure to conclude a contract, the law will intervene to provide a remedy. This is done on the basis of fairness: where a worker is hired to do a job, that worker is entitled to be paid, a principle perhaps derived from Luke 10:7. The law does not look in appropriate circumstances to the technicality of a precise concluded agreement: once the work is expressly sought and properly done there should be fair remuneration. There must be an understanding fairly arising on both sides that such reasonable remuneration will be payable, however. Sometimes this is a necessary inference from the circumstances under which the work was done; on occasions the inference goes the opposite way.

12. In *Coleman v Mullen* [2011] IEHC 179, (Unreported, High Court, Hogan J., 3rd May, 2011) the issue was care by a relative for a person who had died after being sick for some years. In the absence of agreement for remuneration, the estate was sued on a *quantum meruit* basis. Hogan J. noted the Australian decision of *Pavey & Mathews Pty. Ltd. v. Paul* (1987) 162 C.L.R. 221 and in particular the statement of Brennan J.:-

> "Correspondingly, *quantum meruit* is sometimes used to describe an action to recover a reasonable sum which is due under a contract and sometimes to describe an action to recover a reasonable sum when the obligation to pay it is imposed by law independently of actual contract. As we have seen, *indebitatus assumpsit* was first expanded to embrace an action of *quantum meruit* when a contract did not stipulate a fixed sum as the remuneration of the work to be done. Later it was expanded to embrace an action of *quantum meruit* in quasi-contract when an obligation to pay was imposed by law independently of contract. There is now, as there was in the seventeenth century, a manifest difference between implying in a contract a term to pay *quantum meruit* and imposing an obligation to pay *quantum meruit* independently of contract."

Hogan J. queried:-

> "whether the law would normally impose an obligation to pay in such circumstances, irrespective of whether an actual contract (or, if you prefer, a promise to pay under such a contract) is implied by law. This is clearly linked to general notions of unjust enrichment, since the obligation is imposed by law to ensure that the recipient of the services is not enriched at the expense of another: see generally Fridman, Restitution (2nd Ed.) at 285-287 where the Canadian law on this topic is helpfully expounded."

13. That claim was dismissed. This was a case where it was not clear from the circumstances that services provided would ever be remunerated financially. Circumstances such as these do not usually give rise to an understanding that party providing the services should be paid.

14. The remedy of quantum meriut applies where there is work done on the basis of a mutual understanding of an obligation to pay. Such an understanding may be tacit and in some circumstances the law may fairly imply the obligation from the context. This has been recognised in a series of cases dealing with the provision of professional services: see Clark, Contract Law in Ireland (5th Ed., 2004) at 599-600. In *Henehan v. Courtney & Hanley* (1967) 101 I.L.T.R. 25 an estate agent was instructed by a purchaser to find a suitable farm. Such a farm was located by the agent and the sale subsequently closed. Teevan J. held that the estate agent was entitled to recover *quantum meruit*, since even though nothing was said about the commission or fees that entitlement arose from the circumstances. In *Chaieb v. Carter* [1987] IESC 5, the plaintiff was appointed to negotiate a contract for the sale of cattle to Egypt. After that first contract, with which there were difficulties, another contract was secured for the export of cattle but no remuneration was fixed. The Supreme Court found that the securing of the new contract flowed from the work carried out by the plaintiff and, as Finlay C.J. observed, the plaintiff was "entitled to reasonable remuneration having regard to the work carried out by him and having regard to the expenditure which he clearly made on behalf of the defendants during this period."

15. In this case there is yet a further problem. It has been impossible to establish in evidence as a probability as to what the rate of remuneration of the plaintiff is. At one stage a figure of €100 was mentioned per hour. This is a substantial sum but one that is possibly capable of being established and there should have been definite evidence in that regard, and definite evidence is absent. It is also impossible to say how many hours the plaintiff worked. Various figures of 40 or 50 hours were put to the plaintiff, but he was not inclined to agree with, and perhaps could not remember, any definite figure. Had the plaintiff established that he had worked for 50 hours at €100 per hour, he would gain an entitlement to €5,000 once that hourly rate was established as a reasonable standard which might be expected to be paid for that kind of work within the community. Even that evidence is absent. On the basis of what the court has been told, and in the absence of any documentary timesheets or detailed diary entries, it is impossible to estimate as a probability how many hours the plaintiff worked. During the course of this, the plaintiff was also meeting with Patrick James Woods and Kevin McKenna on other projects, for which he charged and was paid. One of these was referenced in evidence as 'the Oasis project', an apparent aside to a nightclub development which never got off the ground.

Limitation period

16. The Statute of Limitations 1957, as amended, also bars this claim. The interaction of the plaintiff on any substantial basis ceased once the housing association interest had been replaced by that of another party. In terms of actual quantifiable work there is not enough evidence to establish a probability that he was providing professional services, whatever these might be, at any date beyond March, 2001. The plenary summons in these proceedings was issued on the 21st January, 2008. The work to be charged for, if recoverable, would have to be done after the 22nd January 2002. The evidence does not support any such assertion.

Conclusion

17. Parties are entitled to deal with each other on the basis that in the future one will negotiate a fee when a profit becomes apparent. This may have been the nature of the transaction between the parties in this instance. This kind of loose arrangement is not, however, a course of business dealings which becomes enforceable in law absent concluded agreement as to the essentials of remuneration and the nature of the service to be provided. Where people are dealing as quasi partners merely on the basis of good faith and high expectation, it becomes impossible to say that a contract for professional services has been agreed.

18. One might finally note that the €70,000 paid to the plaintiff would at the hourly charge rate of €100 which he mentioned have involved him in 700 hours of work on a *quantum meruit* basis. Even were that claim capable of being made on the evidence, and it has not been made out at all, there has been more than ample remuneration of the plaintiff.

19. The claim of the plaintiff must therefore be dismissed.