

**THE HIGH COURT**

**[2009 No. 136 MCA]**

**IN THE MATTER OF EILEEN OGLESBY AND THE PROPERTY REGISTRATION AUTHORITY AND**

**IN THE MATTER OF S. 19(1) OF THE REGISTRATION OF TITLE ACT 1964, AND**

**IN THE MATTER OF S. 120(5)(B) OF THE 1964 ACT AS AMENDED BY S. 69 OF THE REGISTRATION OF DEEDS AND TITLE ACT 2006, AND**

**IN THE MATTER OF FOLIOS 42575 DONEGAL AND 36099F DONEGAL**

**JUDGMENT of Mr. Justice Abbott delivered on the 21st day of April, 2010**

1. This appeal arises from the claim by the plaintiff for compensation pursuant to s. 120 of the Registration of Title 1964 Act, to compensation by the Property Registration Authority for losses suffered by her by reason of an error that originated in the Land Registry in relation to the lands described in the heading hereof. In para. 3 of the plaintiff's affidavit sworn on the 22nd June, 2009, grounding the claim, she sets out the relevant facts where she avers as follows:-

"(a) In July, 1996 I purchased folio 42575 Donegal for valuable consideration and as a bona fide purchaser from one, Mary Sharkey.

(b) In or around 2007, I intended to sell this land and it was only then discovered that part of plot '2B' on folio 42575 had at some point in the past been transferred to folio 36099F County Donegal and that, in effect, I had lost control of it. Further, this plot because of its intrinsic value prevented the other lands being disposed of. There has been no prior indication of this and, indeed, the Land Registry printouts continue to show plot '2B' on folio 42575.

(c) It would appear that the erroneous registration had occurred at some point in the 1990s, but at the latest in 1997.

(d) However, I reiterate that the matter only came to my attention when planning was sought for the lands, and I had no knowledge whatsoever of the transfer, nor nothing to suggest to your deponent that anything was amiss.

(e) The Property Registration Authority by ruling of the 21st April, 2009, formally refused compensation and I now wish to appeal this refusal to this Honourable Court, not least...my land has been devalued €250,000."

2. From studying the maps exhibited with the application to the Registration Authority and from hearing the evidence of Mr. Bonner, Solicitor, regarding the physical layout of the plots in respect of which compensation is claimed, I am satisfied that the plot purchased by the plaintiff in respect of which compensation is claimed (hereinafter referred to as "the disputed plot"), constituted a piece of ground lying between other fenced off lands of the plaintiff and the foreshore in a coastal location, which had not been fenced off from other surrounding lands, and was accessible from the foreshore and other adjoining lands. There was no signposting, lock spitting, rock piling or other physical assertions of title, much less the physical occupation of the lands by grazing of such animals that might eke out an existence, (at least for some time of the year), on the very marginal grazing that might exist between the rocky waste, the outcrop of which characterised this land. In view of this latter consideration it is with some hesitation that I accept the plaintiff was, in fact, a purchaser for value without notice of the folio in the first place. The purchaser of any unenclosed lands runs the risk of being saddled with rights of possession, that affect the lands without the necessity of registration where rigorous enquiries are not made in relation to the user of such lands, and where there is strict insistence on proof that the vendor has asserted title in some way so as to flush out other pretenders or claimants to the title.

**The Law**

3. While the case in *Re Ryan's Estate* [1945] I.R. 359 dealt with s. 93 of the Local Registration of Title (Ireland) Act 1891, the precursor of s. 120 of the Registration of Title Act 1964, the majority decision in that case is authority for the proposition that the time from which the right to claim compensation ran was the date of the last transfer for valuable consideration: in this case that would be the date of purchase of the disputed lands by the plaintiff in 1996. This decision was followed by the Supreme Court in *Application of Sean Leonard, Folio 20518 County Limerick* (Unreported, 30th December, 1981), (albeit with reluctance) s. 120 of the Registration of Title Act 1964 provides as follows:-

120. - (1) This section applies to loss sustained by any person by reason of

(a) the rectification by the court of any such error in registration as may be rectified under subsection (1) of section 32, or

(b) any error originating in the Land Registry (whether of misstatement, misdescription, omission or otherwise, and whether in a register or in a registry map) which occurs in registration and is not rectified under the said subsection (1), or

(c) any entry in or omission from a register or registry map caused or obtained by forgery or fraud, or

(d) any error in an official search carried out by a registering authority or any of his officers, or

(e) the inaccuracy of any office copy of or extract from a register or registry map, or of any office copy of or extract from any document or plan filed in the Land Registry.

(2) Where any person sustains loss to which this section applies, and the loss is not caused or substantially contributed to by the act, neglect or default of himself or his agent, that person and also any person deriving title from him shall be entitled to compensation for that loss in accordance with this section.

(3) In the case of rectification of an error by the court under subsection (1) of section 32, the costs and expenses incurred by the applicant in obtaining the rectification shall be deemed to be a loss to which this section applies.

(4) All compensation payable under this section shall be paid out of moneys provided by the Oireachtas.

(5) The following provisions shall apply to every claim for compensation under this section:

(a) the claim shall be made in the prescribed manner to the Registrar and notice thereof shall be given to the Minister for Finance;

(b) the Registrar shall determine the claim and such determination shall be final unless either the Minister for Finance or the claimant is dissatisfied with that determination, in which case either party may appeal to the court;

(c) no claim shall be entertained by the Registrar after the expiration of a period of six years from the time when the right to compensation accrued unless, on the expiration of such period the person entitled to claim was under disability, in which case the claim shall not be entertained after the expiration of two years from the termination of the disability, but the determination of the Registrar to refuse or allow a claim under this paragraph shall be subject to appeal to the court;

(d) for the purposes of paragraph (c), the right to compensation shall be deemed to have accrued—

(i) in regard to any estate or interest in possession, on the date of the registration which occasioned the loss in respect of which compensation is claimed, or

(ii) in regard to any estate or interest in remainder or reversion, on the date when such estate or interest would, but for such registration as aforesaid, have fallen into possession;

(e) the compensation shall include the costs incurred by the claimant in establishing his claim.

(6) Where compensation is paid under this section to any person—

(a) the compensation (other than costs) shall be applicable in discharge of any incumbrances affecting the estate or interest of that person in the land or charge in respect of which the compensation is payable;

(b) the Minister for Finance shall have the same right to recover the amount of such compensation from any person who caused or derived advantage from the loss as the person who suffered the loss would have had if the loss were an injury caused to him by the first mentioned person.

4. Counsel for the plaintiff has argued on the basis of the findings in *Re Ryan's Estate* [1945] I.R. 349, that the date from which time runs against the plaintiff is the date when she discovered the adverse claim/registration to the disputed lands when she applied for planning permission, which is a date that falls within six years of the application for compensation in the appeal. In the alternative, counsel for the plaintiff argued that the jurisprudence of the Irish Courts in relation to discoverability has developed since 1982, citing *Tuohy v. Courtney* [1994] 3 I.R. (Supreme Court). In this context submissions of both counsel relied on the decisions in *Hegarty v. O'Loughran* [1990] 1 I.R. 148, *Morgan v. Park Developments Ltd* [1983] I.L.R.M. 156, *Martin Doyle v. C&D Providers (Wexford) Ltd* [1994] 3 I.R. 57, *Irish Equine Foundations Ltd v. Robinson and Others* [1999] 2 I.R. 442, *White v. Dublin City Council* [2004] 1 I.R. 545. Counsel for the plaintiff also relied on the relief for mistake expressly contained in the Statute of Limitations 1957. Having considered the arguments based on the authorities, I am satisfied that I am bound by the authority of the Supreme Court in *Re Ryan's Estate* [1945] I.R. 349 and *Application of Sean Leonard, Folio 20518 County Limerick* (Unreported, 30th June, 1981), not only because the High Court is bound by the constitutional precedence of the Supreme Court, but also I am convinced that the extension of the modern law of limitation of actions, both in statute and in the development of judicial jurisprudence in the constitutional sphere, which widens the scope of discoverability to allow for an extension of time, as the accrual date in respect of a claim for compensation does not have any relevance to the interpretation of s. 120 of the Registration of Title Act 1964 in the case for the following reasons:-

(1) On the basis of the judgment of Geoghegan J. in *Irish Equine Foundation Ltd v. Robinson* [1999] 2 I.R. 442, at p. 445 where he states:-

"It is common case that discoverability, as such, cannot be relevant in considering what is the appropriate commencement date in respect of the limitation period. On this point at least, the view of the House of Lords taken in *Pirelli v. Oscar, Faber & Partners* [1983] 2 A.C. 1, represents Irish law also. This is quite clear from the decision of the Supreme Court in *Hegarty v. O'Loughran* [1990] 1 I.R. 148, even though that particular case dealt with personal injuries and not damage to a building...

The reasoning contained in the several judgments in *Hegarty v. O'Loughran* and the criticism voiced of the decision of Carroll J. in *Morgan v. Park Developments* [1983] I.L.R.M. 156, indicates beyond doubt that the Supreme Court rejects the discoverability test no matter what the nature of the damage claimed is...

Any constitutional challenge on this account was rejected by the Supreme Court in *Tuohy v. Courtney* [1994] 3 I.R.. It was pointed out in that case that the Oireachtas had to achieve a balance between being fair to the plaintiff and being fair to the defendant who should not have to meet a stale claim. I need not elaborate of this matter any further because it is accepted that discoverability is irrelevant."

(2) I cannot see any arguments for a jurisprudence evolving a relieving aspect in respect of discoverability any more than allowed for in *Re Ryan's Estate* [1945] I.R. 349 in regard to compensation claims under s. 120 of the Registration of Title Act 1964, as the persons likely to claim compensation being purchasers for value without notice or persons who have engaged in the preparation of, and execution of a formal transfer as a prelude to registration, all of which involves a commercial transaction or deal between purchaser and vendor. It would seem to illustrate a type of social contract for compensation to the purchaser under s. 120 of the Act of 1964, which is not concealed, but constitutes the bedrock guarantee of conclusiveness of the register. Any purchaser must be taken to be fully advised as to the value of the commercial guarantee of s. 120 of the Act of 1964 and its transitory nature relating to its exercise, albeit for the generous period of six years.

(3) It would be quite inconsistent with the public policy of the Constitution of Ireland, 1937 guaranteeing the rights of

private property to allow a situation to develop in the courts whereby a jurisprudence allowing for a more liberal version of discoverability to arise, which would excuse property owners seeking to avail of the constitutional right of private property, to neglect making enquiries in relation to the security of the very valuable commercial guarantee provided by s. 120 of the Act of 1964, either by fencing, exercising possession or even by perusing the documents in the Land Registry in relation to unfenced property.

(4) The question of considering a mistake, even if it could factually arise under the Statute of Limitations 1957, does not arise, as the court is not mandated to consider the provisions of another statute when a specific statute, namely s. 120 of the Registration of Title Act 1964, exists to deal with the situation under consideration. In any event, counsel indicated that they were unable to find any authority of assistance in relation to the application of mistake under the Statute of Limitations 1957.

5. Accordingly, I find that the plaintiff has made her claim following the objection to her application for planning permission well outside the six year period following her registration as owner of the property in 1996, and that she is statute barred in consequence and her appeal must be dismissed. I, therefore, dismiss the appeal.