



THE COURT OF APPEAL

Neutral Citation Number: [2019] IECA 84

Record Number: 2017 94

**Whelan J.
Baker J.
Costello J.**

BETWEEN/

MARINE HOTEL (SUTTON) LIMITED, GRAND HOTEL, MALAHIDE LIMITED AND ALOYSIUS RYAN

PLAINTIFFS/RESPONDENTS

**- AND -
CHRISTIAN MORRIS**

DEFENDANT/APPELLANT

JUDGMENT of the Court delivered on the 22nd day of March 2019 by Ms. Justice Máire Whelan

1. This is an appeal from a judgment and orders made by Mr. Justice Gilligan in the High Court on the 1st March, 2017. The learned judge refused the reliefs sought and struck out a motion issued by the appellant on the 11th December, 2015. The appellant, who is a litigant in person, contends that the trial judge failed to consider the entire evidence and that his case did not receive an adequate airing, and further that the decision of the High Court leaves him under an "oppressive jeopardy".

Background to application which gave rise to the orders under appeal

2. The respondent companies own and operate two well-known hotel premises in north Dublin known as the Marine Hotel, Sutton and the Grand Hotel, Malahide. The third named respondent is a director of both companies. From the year 2007, an unhappy relationship developed between the appellant, who resided in the locality of the Marine Hotel, and the respondents. This has resulted in a variety of litigation between the parties.

Events in 2013

3. On the 25th October, 2013, the respondents instituted proceedings in the High Court seeking interlocutory injunctive relief restraining the appellant from trespassing at the Marine Hotel, Sutton and the Grand Hotel, Malahide. Injunctions were also sought restraining him from contacting, interacting with, unlawfully threatening, harassing or besetting the respondents or their staff or guests by way of telephone, fax, email or otherwise. The interlocutory reliefs claimed included an injunction restraining the appellant from filming the staff of either hotel.

4. In an affidavit sworn on the 7th November, 2013 in the said proceedings before the High Court, the appellant at para. 10 volunteered the following undertaking: -

"In order to facilitate the course of Justice, I hereby undertake to continue to: -

(i) keep off the lands and premises of the Marine Hotel Sutton, Sutton Cross, Dublin 13;

(ii) keep off the lands and premises of the Grand Hotel, Malahide, County Dublin;

(iii) not communicate in any way with the Marine Hotel Sutton or the Grand Hotel Malahide, or any Director or any employee thereof;

(iv) not telephone or fax or email the Marine Hotel Sutton or the Grand Hotel Malahide,

in full and willing recognition of the specific and unenumerated rights of the Plaintiffs to so instruct me, notwithstanding any statutory or other obligations which might remain upon the Plaintiffs, and to maintain this position until the Court direct otherwise."

The 2013 Order

5. The application for interlocutory injunctive relief came on for hearing in the High Court on the 13th November, 2013. In light of the undertakings voluntarily proffered under oath in his affidavit by the appellant, there can be little surprise that the order of the Court recited verbatim the undertakings offered at para. 10 of the appellant's affidavit as set out at para. 4 above and provided:-

"...upon hearing said Counsel and the Defendant in person and the Defendant undertaking to the Court as set out in his Affidavit filed the 29th October 2013... the Court accepts the Defendant's undertakings as set out above and Doth Order that the proceedings herein be adjourned generally with liberty to either side to re-enter to apply to the Court on the usual forty-eight hours' notice".

The undertaking is clear as to its terms. It is open-ended in duration. The costs of the motion were reserved. As frequently arises, once the undertakings were given the orders of the Court addressed the substantive issues which had precipitated the institution of the proceedings in the first place. Accordingly, the litigation did not further proceed. A significant feature of this case is that at no time thereafter did the respondents assert any breach of or non-compliance by the appellant with the undertakings set out in the 2013 order.

Events in 2015

6. On the 11th December, 2015 the appellant issued a motion in the proceedings seeking relief as follows: -

(i) A finding by the High Court that he had adhered to certain undertakings previously

made;

(ii) An order striking out the entire proceedings as frivolous, vexatious, bound to fail, premature, and an abuse of process; and

(iii) An order restricting the respondents from initiating any fresh proceedings against him unless they obtain prior leave from the President of the relevant court, in other words, an Isaac Wunder Order.

7. The appellant expressed a belief that the respondents have characterised the undertaking given by him and recited in the 13th November, 2013 order as, in effect, an injunction of the High Court against him. He contended that the 2013 proceedings were misconceived, vexatious and an abuse of process.

8. In a subsequent affidavit sworn on the 26th October, 2016 he sought to re-open the concluded interlocutory proceedings and contest many of the matters deposed to by the third named respondent Aloysius Ryan in his 2013 grounding affidavit.

Hearing of motion in the High Court

9. The motion came on for hearing before Mr. Justice Gilligan on the 1st March, 2017. The appellant was present in court and self-represented. The following excerpts from the transcript are of note.

It was submitted by Mr Buttanshaw B.L. on behalf of the respondents that: -

"...It's in fact Mr. Morris' motion, so he's going to have to indicate to the Court what he wants to do with it, tell the Court what it's about. ... There were injunction proceedings. There was an undertaking received by the Court on the 13th November, 2013. Nothing has happened in the proceedings after that until Mr. Morris brought the motion which is in this booklet, and the motion is essentially a motion seeking declarations that he has complied with his undertaking and then seeking declarations that the action was frivolous and vexatious in the first place and seeking an Isaac Wunder Order against my clients. I say it's a misconceived motion and it should simply be struck out, but it's not my motion."

10. Counsel for the respondents continued elsewhere: -

"...At this stage my clients are happy with the undertakings. They'll be reactivated if there's ever a breach of the undertakings and there will be contempt proceedings. I am not suggesting that there ever will be a breach of the undertakings. So, I think my clients are happy enough that the matter, that the proceedings lie dormant...."

Stance adopted by the appellant in the High Court

11. In response to the above statements of counsel for the respondents, at p. 3 of the transcript, line 34, the appellant stated to the judge: "I'm agreeable to my motion being struck out. You proposed striking out the proceedings as well and I would be agreeable to that also."

To that the judge responded: -

"...The plaintiff doesn't want that, but he says he's prepared to leave it. You've given an undertaking apparently. As long as the undertaking is complied with, if I understand the situation correctly, the proceedings won't trouble you any further."

The appellant replied: "Thank you judge." The judge proceeded to strike out the appellant's motion with no order.

12. The appellant in the course of this appeal contended that the reason he consented to the matter being dealt with in that manner was that the High Court judge had a very busy list on the day in question. However, that does not satisfactorily address or resolve the fundamental unstateability of this appeal at every level. The appellant is a highly educated person and a teacher by profession. He is well versed in litigation and conversant with the rules of evidence and practice and procedure of the courts - particularly of the High Court.

Permanent Undertakings

13. In the instant case the appellant had volunteered specific undertakings to the High Court in 2013. The matters deposed to at para. 10 of the appellant's own affidavit of 7th November, 2013 were clearly relied upon by the respondents and the court in the injunction proceedings for the purposes of establishing his stance in relation to the interlocutory orders which were being sought against him. The respondents accepted the terms he proposed. The undertakings received in the High Court on 13th November, 2013 record verbatim the undertakings contained in his own affidavit.

14. By virtue of giving the undertakings, the application for interlocutory relief was resolved and no order for costs was made. Whilst the undertakings in effect disposed of the action the proceedings, of necessity, remained in being to facilitate enforceability should the necessity arise.

15. The appellant has never sought to have varied or amended the undertakings voluntarily given in the High Court on 13th November 2013. Irrespective of any complaint or issue the appellant may have against the respondents, he is not free to unilaterally resile from the undertakings he gave to the court. If he wishes to resile from or have varied one or more of the undertakings, he should first seek the approval of the High Court for a specific variation on some identifiable basis or ground. None such are identified in his grounding affidavit.

16. It appears that the appellant does not so much seek to be relieved of his undertakings given in November 2013 but rather seeks a positive affirmation that he has complied with same. Such an affirmation or confirmation is for the reasons I now examine neither necessary nor appropriate.

17. Having due regard to the submissions made by counsel on behalf of the respondents, it appears that the orders made, and the undertakings given by the appellant to the High Court on the 13th November, 2013, were based on a contractual foundation whereby the respondents compromised the motion for interlocutory relief that was before the court. As frequently occurs, the undertakings had the effect of compromising the entire litigation. The respondents have evinced the clear and continuing intention not to prosecute the litigation and not to otherwise re-enter the proceedings save should it ever be necessary in the event of a breach of the undertakings by the appellant. The undertakings given by the appellant were not limited in duration.

18. Individuals are required to comply with the law and their legal obligations, particularly where freely undertaken and embodied in orders of the court made by consent.

19. The appellant's motion seeks a declaration that he has complied with his undertakings. Such a declaration, as an affirmation of compliance in this context, is not known to the law. It has been recognised since the enactment of s. 155 of the Chancery (Ireland) Act, 1867 that a court can "make binding declarations of right". That provision finds its present expression in Order 19, rule 29 of the Rules of the Superior Courts, *per Delany & McGrath on Civil Procedure* (4th ed.) at para. 31-21. "It is not the function of the courts to provide gratuitous declarations of compliance with the law in circumstances where no *lis* between the parties contends otherwise and no interested party advances a contrary proposition."

20. There is no assertion by the respondents that the undertakings have not been complied with. A declaration ought only be made where its terms are binding upon a party whom, in the opinion of the court, ought to be bound. Since there is no dispute between the parties identified concerning compliance by the appellant with the undertakings, this application is at best premature. A legal basis for the making of the declaration is not made out. The High Court does not retain an officious jurisdiction to declare at the behest of a party who gave an undertaking in open court that he or she has complied with same in circumstances where neither the beneficiary of the undertaking, nor any interested party, has raised an issue with regard to non-compliance.

21. The respondents have advanced sound and cogent reasons why they do not wish the proceedings to be struck out. It is entirely reasonable for them to wish to maintain the proceedings in being for the purposes of ensuring that the High Court, which accepted the undertaking in the first place on the 13th November, 2013, and to whom it was reiterated and affirmed by consent on the 1st March, 2017, may police the said undertaking should any issue arise in the future regarding breach of or non-compliance with its terms. By the same token, as counsel for the respondents acknowledge, it is open to the appellant should he wish to do so to seek to vary the terms of the undertakings given.

22. For completeness, I am satisfied that the arguments advanced by the appellant in support of a contention that the proceedings were frivolous, vexatious, bound to fail, premature or an abuse of process, constitute a further redundant proposition which is wholly unstateable and not supported by any material facts. The fact that interlocutory injunctions were sought and open-ended undertakings were given by the appellant wholly undermines the application. The undertakings given to the High Court on the 13th November, 2013, and reiterated and acknowledged on the 1st March, 2017, are fundamentally inconsistent with such a contention. No ground is disclosed to support the appellant's claim for an order restricting the respondents from initiating any fresh proceedings against him unless they obtain prior leave from the President of the relevant court.

23. Further, having consented to the orders made in the High Court on the 1st March, 2017 striking out his application, no basis for an appeal of that consent order is disclosed by the appellant. The appeal amounts to an impermissible *volte face* in circumstances where the appellant by his words and conduct led the High Court judge to proceed on the footing that he accepted without demur the unsustainability of his application. This appeal is not maintainable at any level on the facts.

24. For the reasons above stated I would dismiss this appeal.