



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 77

Kelly J.
Finlay Geoghegan J.
Irvine J.

2014 94

Allied Irish Banks plc

Plaintiff

and

John Hanrahan and Selina Hanrahan

Defendants

Ex Tempore judgment delivered on the 13th day of April 2015, by Mr. Justice Kelly

1. There is before the court this morning a notice of motion which has been brought by Mr. and Mrs. Hanrahan in which they seek a number of reliefs. Before I come to consider those reliefs it is necessary to sketch out in a little detail the background to the matter.
2. On the 16th February, 2004, a judgment was obtained by the plaintiff Allied Irish Banks against Mr. and Mrs. Hanrahan for a sum in excess of €80,000.00. The Hanrahans brought an appeal to the Supreme Court against that judgment. That appeal has been pending since that time. Following the Article 64 amendment to the Constitution, the appeal fell to be dealt with in this Court and in due course came before the court for directions.
3. It was intimated that negotiations were going on between the parties at that stage and the matter was adjourned on a number of occasions. Those negotiations resulted in a consent being executed by the plaintiff bank and Mr. and Mrs. Hanrahan.
4. The terms of settlement were by agreement of the parties made a rule of court. It is not necessary to go into the details of the terms of settlement save to record that they provided for the setting aside of the judgment which had been granted in the High Court in February 2004. In lieu thereof, a lesser sum by a substantial margin, some €30,000 less, was substituted and a judgment for that sum entered. But it was agreed that execution would not issue in respect of that sum for a number of years provided that certain sums were paid. There are other terms of the settlement which are not particularly germane for the purpose of this ruling.
5. At the request of Mr. Hanrahan liberty was given to apply. It is on foot of that liberty to apply that this notice of motion is brought this morning.
6. The background to the application this morning appears to arise from the fact that there was a sum of money standing to the credit of Mr. Hanrahan with Standard Life. In January 2008, that company wrote to Mr. Hanrahan in the following terms:

"Dear Hanrahan

I write in reference to our previous correspondence regarding your life insurance policy held with Standard Life. As per our conversation we investigated any assignments that may be connected to your policy. Furthermore AIB have responded with confirmation of their status as assignee and have requested that the monies be paid straight to them.

However as previously agreed we have withheld this payment until a resolution has been reached with AIB and we would be obliged if you would contact us in this regard."

7. It would appear that as far as Mr. Hanrahan was concerned, those monies were still standing to his credit in Standard Life. However in the correspondence which has been exhibited, on the 22nd May, 2012, Allied Irish Banks wrote to Standard Life in the following terms:-

"Further to our telephone conversation today, we wish to confirm that we still hold a letter of assignment over the particular policy in question. We should be obliged if you could arrange to forward the proceeds of the policy to me at the above address please.

Thank you for your assistance in this matter."

8. It would appear that on foot of that request, Standard Life did in fact pay the money to Allied Irish Banks.
9. Following the ruling of the settlement in this Court, Mr. Hanrahan went to Standard Life and it is his contention that he discovered for the first time that the monies which he believed were still standing to his credit with that company had in fact been paid to Allied Irish Banks in 2012.
10. On the 27th February, 2015, Standard Life confirmed the following to Mr. Hanrahan. They said: *"I can confirm that we have paid the proceeds of the policy to AIB Bank under their notice of assignment reference dated the 10th January, 2001.*
Confirmation was received from AIB on the 22nd May, 2012 that they still held an assignment on the policy.
The payment of €24,825.01 which was the final maturity value of the policy was made to AIB on the 19th June, 2012, for the attention of Declan Darby, Debt Recovery Department.

11. So, the monies were paid over and there is confirmation of that fact from Standard Life.

12. In fairness to Standard Life it has to be said that they subsequently acknowledged in open correspondence that the way in which Mr. Hanrahan was dealt with was not appropriate and was not in accordance with the standards which they would normally aspire to.

They have made an offer of moneys to him with a view to addressing the acknowledged substandard treatment which he was given.

13. That is by way of background to put the motion which has been brought this morning into context. In it Mr. Hanrahan seeks a threefold relief. First he seeks an order compelling the plaintiff/respondent or the solicitor on record to explain why he was never informed of what took place between Allied Irish Bank and Standard Life Insurance. Second, he seeks an order compelling the solicitor on record, Mr. Galvin, to explain why he relied in negotiations on the original principal figure of €82,498.81 when the principal figure should have been €58,173.80 after the monies paid by Standard Life to AIB are taken into account. The third relief which he seeks is an order directing the plaintiff/respondents to return the monies wrongfully removed from Standard Life without the knowledge of the plaintiff/appellant and any other orders that the court may deem fit.

14. It is important to point out that the terms of the consent made no mention anywhere of Standard Life or the monies in question.

15. It is also important to delineate the limited jurisdiction of this Court. It is an appeal court and not a court of trial. The terms of consent which were entered into constituted a contract made between the bank and the Hanrahans in settlement of the appeal which has been on the books of the courts since 2004.

16. Those terms of settlement stand until such time as they are set aside. In the replying affidavit sworn by Mr. Galvin and again in open court, counsel on behalf of the bank made it clear that if Mr. Hanrahan wishes, it will agree to have the settlement set aside.

17. The effect of that would be that Mr. Hanrahan's original appeal against the order of the High Court in February 2004 would revive, but so would the judgment for €82,498.81.

18. This Court was not a party to the negotiations which led up to the settlement being arrived at and formulated in the consent of the 25th February, 2015. They were conducted between Mr. Hanrahan and the solicitor acting on behalf of the bank. Still less was this Court involved in giving any form of approval to the terms of consent. All that happened was that a contract entered into between the parties was by their own agreement incorporated into a court order in settlement of the appeal.

19. It is not open to this Court and it does not have the jurisdiction to make orders of the type which are sought by Mr. Hanrahan in this notice of motion. It does not have jurisdiction to compel the solicitors on record to say why Mr. Hanrahan was not informed of what took place between Allied Irish Banks and Standard Life Insurance.

20. It does not have jurisdiction to compel the solicitor on record to explain how he computed the sums which are set out in the consent and why as is said by Mr. Hanrahan, the original €82,000.00 was not reduced to €58,000.00 having regard to the monies that were paid to the bank by Standard Life.

21. It does not have jurisdiction to make an order of the type which he seeks in para. 3 directing the bank to return the monies which he says were wrongfully removed from Standard Life.

22. The court simply does not have jurisdiction to deal with those three matters which Mr. Hanrahan seeks to advance here today. For my part, I take the view that it is not open to the court to make the orders sought.

23. One cannot but have sympathy for the position in which Mr. Hanrahan finds himself. But the position which obtains now is as follows. The settlement agreement which he entered into with the bank, and which I would have to say seems to be advantageous to him, stands until such time as it is set aside. It can be set aside in one of two ways; by agreement, and the bank has already indicated that it will be prepared to agree to this if Mr. Hanrahan wishes. Then the court will by consent set aside the terms of settlement. But as I pointed out that will revive the original judgment for €82,000.00 but so also will be revived the appeal brought by Mr. and Mrs. Hanrahan.

24. Alternatively, Mr. Hanrahan can take advice and if he wishes to seek relief in respect of the settlement in another court, a court of trial, that is entirely a matter for him.

25. I could not see that there would be much advantage to him in so doing, because the terms of settlement are clearly advantageous to him having regard to those to which I have adverted.

26. So far as I am concerned, I have to say that, sympathetic as I am to the plight of Mr. and Mrs. Hanrahan and conscious of the lengthy history of litigation that they have been involved in, I have to refuse the relief which is sought in the notice of motion on the basis that this Court does not have jurisdiction to make such orders or to entertain an application of this sort. For my part I would refuse the reliefs sought.

Finlay Geoghegan J.: I too would refuse the reliefs sought for the reasons set out by Mr. Justice Kelly and I also share the views that Mr. Justice Kelly has expressed as to what appears to be the benefit for Mr. and Mrs. Hanrahan of the consent which has been entered into. If the judgment of the High Court is revived in the principal sum of €82,498.81, it is a judgment that dates from the 16th February, 2004 and it revives not only for the principal sum, but also for interest which would have accrued since that date, so I too dismiss the appeal.

Irvine J.: I agree with the judgment that has been delivered by Mr. Justice Kelly for the same reasons.