



THE COURT OF APPEAL

Record Number: 2015 No. 148

**Peart J.
Irvine J.
Hogan J.**

BETWEEN:

SEAMUS GEANEY

PLAINTIFF/RESPONDENT

AND

PATRICK O'CONNOR

DEFENDANT/APPELLANT

JUDGMENT OF MR JUSTICE PEART DELIVERED ON THE 18TH DAY OF MARCH 2016

1. This appeal has its origins in May 2000 when the plaintiff/respondent (Mr. Geaney) provided a loan of IR£500,000 to the defendant/appellant (Mr. O'Connor) to assist him with certain financial difficulties he was experiencing at the time in relation to his business. Interest was payable at the rate of 2% over the Bank of Ireland single A Overdraft Rate from the 8th December 2000.

2. By the time these proceedings were issued the amount owing, including interest, was €671,100, and by February 2003 when the plaintiff swore his affidavit to ground a motion seeking liberty to enter final judgment, that sum had risen to €833,343. The claim was adjourned to a plenary hearing, and for reasons that are not immediately relevant that hearing did not take place until the case came for hearing before Mr. Justice Feeney on the 11th July 2011. Both parties were represented by both solicitor and senior and junior counsel, and the Court was informed that agreement had been reached between the parties and that by consent judgment could be entered in favour of the plaintiff against the defendant in the sum of €650,000, and that Mr. O'Connor's counterclaim against Mr. Geaney should be struck out. No order was made in relation to costs, presumably as part of the agreed terms between the parties.

3. The present appeal is against an order made by Ms. Justice Baker on the 26th February 2015 whereby she refused Mr. O'Connor's application to set aside the judgment which had been entered against him with his consent on the 11th July 2011.

4. However, prior to the hearing of that motion, there had been two other motions heard and determined in the High Court by which time Mr. O'Connor was without legal representation and represented himself – one by Mr. Geaney in which he sought relief aimed at aiding execution of his judgment against Mr. O'Connor, and on foot of which an order was made by Ryan J. (as he then was) on the 22nd July 2013 that Mr. O'Connor swear an affidavit setting out a list of his assets – and one by Mr. O'Connor wherein he sought a number of reliefs against Mr. Geaney including discovery of documents relating to certain land transactions, and an order for the cross-examination of Mr. Geaney. In his grounding affidavit for this motion Mr. O'Connor alleged that the judgment had already been satisfied by him, and that he needed the documents being sought by way of discovery in order to prove that this was so.. He averred that the order made by Ryan J. on 22nd July 2013 was premature until he got discovery of the documents he was seeking. .However, he attached by way of exhibit A Statement of Assets which he contended was in compliance with the order of Ryan J. dated 22nd July 2013. On the 7th April 2014, having heard Mr O'Connor's application, essentially for discovery of documents, Ryan J. refused to make any of the orders sought by Mr O'Connor. It was only following the making of that order that Mr. O'Connor decided that he would bring another motion, namely to set aside the consent judgment entered against him on 11th July 2011.

5. In the affidavit which he swore to ground this application to set aside the consent judgment, Mr O'Connor again claimed firstly that he had satisfied the amount of the judgment *i.e.* €650,000, and secondly that *"the attempts by the plaintiff to collect these additional monies from me is in itself a fraudulent act because the plaintiff has full knowledge that these monies have already been paid from the lands transacted by [the] plaintiff with [the] defendant and another at Terrysland, Carrigtwohill, County Cork"*. In addition he made a number of averments to the general effect that on the day the matter came before Feeney J. on the 11th July 2011 at all times his instructions to his solicitor and counsel were that he wished to mount a robust defence to the plaintiff's claim on the basis that he was the victim of a fraud perpetrated against him by Mr. O'Connor on or about the 21st December 2001.

6. The 21st December 2001 is the date on which the lands at Terrysland were sold to Mr Geaney by a Denis O'Sullivan who had taken over Mr. O'Connor's interest in those lands under a co-ownership agreement dated 18th May 2000, and was entitled to sell the lands. However, Mr O'Connor's belief is that upon completion of that sale, and under the terms of that co-ownership agreement with Mr. O'Sullivan, his debt to Mr. Geaney was to be discharged. In fact he believes that it was so discharged by the transaction that took place, and this is in very broad outline the basis of his claim of fraud, despite the fact that he consented to judgment being entered against him on 11th July 2011.

7. I have refrained from setting out in complete detail what Mr. O'Connor has to say about the background to Mr. Geaney's claim and the land transaction in question, because the disposition of his application to set aside the judgment, and his appeal against the order of Baker J. refusing that application, can be, and indeed must be, determined on a purely legal basis clearly defined by the jurisprudence guiding the Court on the circumstances in which fraud can provide a basis for the setting aside of any judgment, let alone one entered on consent. The allegations of fraud which Mr. O'Connor makes in this regard were fully explained in affidavits which he swore on the two motions which came before Ryan J. on 22nd July 2013 and 7th April 2014 and on each of which Ryan J. found against Mr. O'Connor. But even more significantly, they were pleaded in great detail in his defence and counterclaim which was delivered after the plaintiff's motion for judgment was adjourned to a plenary hearing, although I note that the defence falls short of

pleading fraud. But the defence included a claim of estoppel, abuse of process and duress on the part of Mr. Geaney, and in his counterclaim Mr. O'Connor pleaded breach of trust, breach of duty and an unlawful interference with his economic and contractual relationships, thereby causing him loss, damage and expense. By way of particularisation of these claims by way of counterclaim, Mr O'Connor pleaded that in breach of these duties Mr. Geaney had failed to discharge encumbrances on the Terrysland lands under the co-ownership agreement, and had "deliberately and wrongfully used deception to deprive the defendant of his rights".

8. Mr. O'Connor's motion to set aside the consent judgment came for hearing before Baker J. on 13th February 2015. Having heard his application, she decided that she would adjourn her decision until she had an opportunity of considering all the affidavits and papers in the case. She gave her decision in an *ex tempore* judgment on 26th February 2015. In her judgment, having briefly outlined the procedural background to the case, she referred to the judgment of Murphy J. in *Tassan Din v. Banco Ambrosiano Spa* [1991] 1 I.R. 569 and to the approval by Murphy J. therein of the well known passage from the speech of Lord Wilberforce in *The Amphill Peerage Case* [1976] 2 All ER 411 to the effect that in order for a judgment to be set aside on the grounds of fraud it must be shown by credible evidence that the Court was deceived into giving a false judgment. Not surprisingly, being faced with a judgment that had been entered with Mr. O'Connor's consent at a time when he was fully legally represented, Baker J. found that this was not a case where it could be said that the Court had been deceived. Her conclusions in this regard were set forth as follows in her *ex tempore* judgment:

"6. Essentially and in the summary an order may be set aside for fraud if it can be shown by credible evidence that the court was deceived.

7. Mr O'Connor represented himself and he made submissions to me and he addressed clearly the questions that I raised of him. In the first place he said to me that Ryan J. gave him a good hearing and he meant by this answer that Ryan J. gave him a good hearing on the motion that came before Ryan J. which was the lengthy motion that issued in the middle of 2014. He also said in reply to my question that it was the underlying transactions between himself and Mr Geaney that he was in fact impugning, and that he could not say that the court was misled when the late Feeney J. was told it was settled. Mr O'Connor quite clearly in response to my question said to me and I quote from his words "I am sorry that I settled the case".

8. It seems to me in the light of the law that I have outlined above that Mr O'Connor cannot succeed in his motion primarily because if there is fraud, and I take his case at its height, the fraud has to be of the transaction or must arise from the transaction that he says and arose between himself and Mr. Geaney. It does not arise and did not arise in the manner in which judgement was obtained and he confirmed in his submissions to me that the judgement was obtained by consent and there was no fraud arising in the way in which the judgement was entered and the way in which the consent was entered for the way in which the judgement negotiation occurred or happened. He might have a complaint against as lawyers, and he has indeed made a complaint against his lawyer but that is not a matter which goes to the question of whether there was fraud on the court. It seems to me that the key to this matter is what he said to me and submissions, that is that ...he is sorry he settled the case. He is not saying that the settlement was not fully reflected in the order.

9. In those circumstances I conclude that Mr O'Connor cannot succeed in setting aside the judgement on the grounds of fraud."

9. Having reached that conclusion Baker J. went on to say that in fact the same issues had been raised by Mr. O'Connor before Ryan J. and that he had already decided them against Mr. O'Connor and this was a clear example of the principles of *res judicata* and issue estoppel. She stated that this was the principal reason why she had taken all the papers away and adjourned her decision so that she could look at all the papers to be certain that in fact these same questions had been before Ryan J.

10. On this appeal, and in an effort to escape the inconvenient clutches of Murphy J's judgment in *Tassan Din* and of *The Amphill Peerage Case* referred to and relied upon by Baker J. in her judgment, Mr. O'Connor on his appeal before this Court has sought to rely upon the judgment of Lord Justice Aikens (Kay L.J. and Toulson L.J. concurring) in *The Royal Bank of Scotland v. Highland Financial Partners LP and others* [2013] EWCA Civ 328, to which he did not refer in the Court below. But that was a case where the court was satisfied that the RBS had misled the Court over a lengthy period of time by means of a "deliberate and conscious and dishonest misstatement/concealment", leading the Court to grant summary judgment in favour of RBS. That case is so far from the facts of this case where judgment was entered by consent, that it cannot be said that the Court was misled into entering judgment.

11. Mr. O'Connor's allegations of fraud, or however one describes his complaints about his indebtedness to Mr. Geaney not having been dealt with following the sale of the Terrylands lands at the end of December 2001, are allegations which he pleaded in his defence and counterclaim prior to the settlement achieved in July 2011 and on foot of which this judgment was entered against him. If, as he says, he was put under some form of duress by Mr. Geaney, or that he was badly advised at the time into settling the case which, as he stated to Baker J., he now regrets, the time and place to ventilate those claims and have them determined was in July 2011 when the case was listed for hearing before the late Mr Justice Feeney. Having foregone that opportunity, he cannot now seek to do so by means of firstly setting aside that consent judgment, and then have the case re-opened and determined again. It was finally determined by means of the consent judgment.

12. I appreciate and take full account of the fact that Mr. O'Connor feels a great sense of grievance about the aftermath of the sale of these lands on 21st December 2001, leaving him in a situation where, contrary to what he believes the intention of the parties to have been under the co-ownership agreement, he was left exposed to a claim by Mr. Geaney whose debt he understood would be extinguished upon the completion of that sale. I also understand and take full account of the fact that as far as he is concerned his complaints about that aspect of the transaction and its outcome for him have never been ventilated at any full hearing of the case, and his firm belief that he should be now given that opportunity. However, he must accept that the judgment which he now seeks to have set aside was one to which he gave his consent. The fact that, as he stated to Baker J, in the High Court, he now regrets that he settled the case is not a sufficient reason for the Court to set aside the judgment. Parties who settle their claims are entitled to finality. By that I mean that in this case Mr. Geaney was entitled to know and expect that after the consent judgment was entered and the case thereby disposed of before Feeney J. these proceedings were at an end, and that what remained thereafter was whatever would be involved in getting his judgment satisfied by Mr. O'Connor. That is the certainty that the law provides to a person in the position of Mr. Geaney by its consistent jurisprudence to the effect that only in very exceptional circumstances will a final order of the court be permitted to be set aside. As Mahon J. stated in *Flynn v. Desmond* [2015] IECA 34:

"... there is ... a very considerable interest in upholding the finality of settlements and courts have been traditionally wary of permitting any litigant to undo any such settlement".

13. That is the law as it clearly stands, and as correctly identified and applied by Baker J. As I have stated, the fraud which Mr O'Connor alleges is not something which served to deceive the Court into granting judgment in Mr. Geaney's favour, for the very simple reason that the judge was simply informed before the hearing commenced that the parties had come to terms and that by consent judgment could be entered against Mr O'Connor in the sum of €650,000. There is no deception of the Court in such circumstances.

14. In view of these conclusions it is unnecessary for me to express any view on the question as to whether matters upon which Mr O'Connor seeks to rely are matters already decided by Ryan J. and are therefore *res judicata*.

15. For the reasons stated, I would therefore dismiss this appeal.