

THE HIGH COURT

Rec No 2005 No.4481P

Between

STEPHEN COSTELLO AND KAREN COSTELLO

Plaintiff.

and

THE COMMISSIONER OF AN GARDA SIOCHANA

Defendant.

Judgment delivered by Mr Justice Michael White on 14th October 2014.

1. This matter comes before the court by way of motion of the Defendant issued on the 27th of August 2013 seeking an order dismissing the plaintiff's proceedings on the grounds of inordinate and inexcusable delay.
2. The plaintiffs issued a plenary summons on 21st December, 2005, alleging harassment, watching and besetting intimidation and intentional infliction of emotional suffering by servants and agents of the defendant.
3. The plaintiffs were granted an ex parte injunction on 21st December, 2005, restraining the servants and agents of the defendant from entering the plaintiffs' dwelling house at 31 Woodstown Gardens, Woodstown, Dublin 16.
4. When the motion was returned to the High Court on 29th December, 2005, the court ordered:-
 - (i) That the defendant, its servants and agents be restrained pending the trial of this action or until further order of this Honourable Court from entering 31 Woodstown Gardens, Woodstown, Dublin 16, except under authority of a warrant or at the request of any member of the household.
 - (ii) The plaintiff to be at liberty to deliver a statement of claim within two weeks from the date hereof and the defendant to be at liberty to deliver a defence within two weeks from the date of delivery of the statement of claim.
5. There followed a complicated history of pleadings, interlocutory applications, appeals to the Supreme Court, which resulted in very substantial delays. At the hearing of this motion on 14th May, 2014, eight years and five months after the initial issue and service of the plenary summons, the substantive action had not yet been heard.
6. A brief history of the progress of the proceedings is as follows.

Appearance entered 4th January, 2006.

Statement of claim delivered 13th January, 2006.

Notice for particulars from the defendant issued on 26th January, 2006.

Motion issued by the defence 13th February, 2006, returnable for 27th February, 2006 seeking extension of time for defence.

Replies to particulars delivered on 8th March, 2006.

Defence was filed on 22nd March, 2006.

Motion for discovery was issued on 11th April, 2006, by the plaintiff's returnable for 8th May, 2006.

Motion was issued by the defendant on 4th May, 2006, returnable 8th May, 2006, seeking to strike out para. 6 of the statement of claim or the greater part of it.
7. This motion was not heard until 12th June, 2007. On that date, Laffoy J. directed that the plaintiffs be given a further opportunity to reply to the original notice for particulars of the defendant and this further reply was furnished on 20th July, 2007. By High Court order of 3rd October, 2007, based on a written judgment, Laffoy J. struck out a substantial number of the subparagraphs of paragraph 6. In her judgment, she stated:-

"Unfortunately, an expeditious disposition of this matter has not been achieved."
8. The order of Laffoy J. was appealed to the Supreme Court. The defendants issued a motion on 11th April, 2008, returnable for 18th April, 2008, seeking to strike out this appeal. The Supreme Court by order of 2nd May, 2008, directed the plaintiffs to file an amended notice of appeal. The plaintiffs did not file a certificate of readiness in the Supreme Court Office until 5th November, 2008.
9. By order of the Supreme Court of 5th February, 2010, it affirmed the High Court order of Laffoy J. of 3rd October, 2007, striking out a substantial part of para. 6 of the statement of claim.
10. The plaintiff served a number of different notices of trial commencing firstly on 26th February, 2010. However, the matter was not set down until 18th July, 2011, [Record No. C54828]. No certificate of readiness had been filed by the plaintiffs as of the swearing of the affidavit of Inspector Jeremiah Keohane on 27th August, 2013.

11. The first named plaintiff, Stephen Costello in his affidavit of 24th March 2014, makes further allegations of harassment relating to dates from 11th May, 2012, to 13th February, 2014, at paras. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, which are irrelevant to the issue before the court.

12. In his affidavit he sets out the reasons for the delay where he states that at all material times he relied upon and continues to rely on his legal advisers to advance their proceedings and refers to a number of difficulties about counsel, and the relationship between the plaintiffs and their original solicitors breaking down, and the retention of a new firm of solicitors and the difficulties which arose as a result.

Legal Principles on delay.

1. The principles were stated by the Supreme Court in *Primor Plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459, and so far as pertinent to the issues raised here, can be paraphrased as follows:-

- (1) the courts have an inherent jurisdiction to dismiss a claim when the interests of justice so require
- (2) the party seeking to have a claim dismissed on the grounds of delay must establish that the delay has been inordinate and inexcusable;
- (3) even where the delay is both inordinate and inexcusable the court must exercise a judgment as to whether, in its discretion, on the facts, the balance of justice is in favour of or against the case proceeding further;
- (4) when weighing the balance of justice between the parties, the court has regard to, inter alia, the following considerations:-
 - (a) the implied constitutional principles of basic fairness of procedures,
 - (b) whether the delay and consequent prejudice in the special facts of the case were such that made it unfair to the defendant to allow the action to proceed and made it just to strike it out,
 - (c) any delay on the part of the defendant, because litigation was a two party operation and the conduct of both parties should be looked at,
 - (d) whether any delay or conduct of the defendant amounted to acquiescence on the plaintiff's delay,
 - (e) whether the delay had given rise to a substantial risk that it would not be possible to have a fair trial or was likely to cause or had caused serious prejudice to the defendant,
 - (f) the fact that the prejudice to the defendant might arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business.

Decision

13. There has been an inordinate delay. In deciding if it is inexcusable and balancing the rights of the plaintiffs and the defendant, the court takes into consideration that the plaintiffs have made serious allegations of abuse of their constitutional and statutory rights by the servants or agents of the defendant. The defendant has considerable resources at his disposal, I doubt if actual prejudice will arise in the defence of the claim. While there has been inordinate and at times inexcusable delay, the court will exercise its discretion not to dismiss the claim.

14. There is an expectation by the courts, when urgent interlocutory relief is sought and granted that there will be an expeditious exchange of pleadings so that a relatively early hearing can be procured.

15. In my opinion, there is serious abuse of process when the plaintiffs having been granted an injunction on 21st December, 2005 and it having been affirmed on consent on 29th December, 2005, on the basis that there would be an expeditious hearing, failed to progress the case expeditiously. The injunctive relief cannot stand so the order of 29th December, 2005 is vacated.