

THE HIGH COURT

[2003 No. 7690 P]

BETWEEN

DAN O'CONNOR AND DAN O'CONNOR JOINERY WORKS LIMITED

PLAINTIFFS

AND

MASTERWOOD U.K. LIMITED, MASTERWOOD SPA ITALY AND NATIONAL IRISH INVESTMENT BANK LIMITED

DEFENDANTS

Judgment of Mr. Justice de Valera delivered the 20th day of June 2006.

1. This is an application by the second named defendant, moved by notice of motion dated the 5th December, 2005 for:

1. A declaration that this honourable court has no jurisdiction over the dispute herein between the plaintiff and the second named defendants,
2. An order setting aside the service upon the second named defendant on the proceedings herein,
3. An order striking out and/or staying the proceedings herein as against the second named defendant,
4. Further or other reliefs,
5. Costs.

2. The action first came before me for hearing on the 19th December, 2005 and was adjourned variously until the 2nd March, 2006, when arguments were heard from both the second named defendant and the plaintiff, in addition Maurice Lyons was cross-examined on his affidavit. The matter was then adjourned for a further period to allow both parties to prepare and exchange written submissions.

3. Submissions were received from the plaintiff dated the 1st March, 2006, from the second defendant dated the 9th March, 2006 and again from the plaintiff, in response to the second defendant, on the 14th March, 2006.

4. I am satisfied that the original agreement between the plaintiff and the first defendant did contain the clause making the sale subject to the terms and conditions of sale of Masterwood SPA Rimini but that these terms and conditions were not specified.

5. I am also satisfied that the agreement signed by Mr. O'Connor on the 19th March, 2002, did contain the relevant clause at article 14 stating *inter alia* that:

"In any controversy ... the Court of Rimini shall have sole jurisdiction."

6. This clause is clearly set out in the body of the agreement and occurs just above the signature of Mr. O'Connor. No one signing this agreement could fail to observe it; - it could not go "unnoticed".

7. The motion in this matter is dated the 5th December, 2006. The plaintiffs' plenary summons is dated the 27th June, 2003, and an unconditional appearance was entered by the first defendant dated the 8th December, 2003. A conditional appearance stated to be for the purpose of contesting jurisdiction was entered by the second defendant dated the 12th December, 2003. A notice of indemnity and contribution was served by the first defendant on the second defendant dated the 20th December, 2004.

8. A notice of motion for judgment in default of defence was served on the second defendant dated the 21st May, 2005.

9. There is not, in the papers before me, any reference to any step or steps having been taken by the second defendant to set aside, or otherwise contest the notice of indemnity served upon the second defendant by the first defendant.

10. I should point out that article 27 and 28 of Council Regulation EC 44/2001 do not appear to apply to this matter, as only one set of proceedings is in being and in one jurisdiction only.

11. I am therefore satisfied that the plaintiff did agree to the clause in the agreement that the Court of Rimini should have jurisdiction in the event of a dispute and that he entered into this agreement freely and without any deceit or subterfuge on behalf of the second defendant which is therefore entitled to succeed in this application.