Neutral Citation Number: [2008] IEHC 179

THE HIGH COURT
COMMERCIAL

2007 No. 7886 P

BETWEEN

PATRICK O'CONNOR AND EILEEN O'CONNOR

PLAINTIFFS

AND
MARTIN POWER (IN TRUST)

DEFENDANT

Judgment of Mr. Justice Kelly delivered on the 13th day of June, 2008

Introduction
1. These are my reasons for finding in favour of the plaintiffs in respect of their claim which was at trial before me on the 22nd and 24th April, 2008.

2. This ruling deals with the parties' respective cases on the merits. Unfortunately, it also has to address the quite unacceptable behaviour of counsel for the defendant both prior to and during the trial.

Background
3. The plaintiffs (the O'Connors) are an elderly couple and Mrs. O'Connor, the second plaintiff, is in poor health.

4. On the 30th March, 2007, they entered into an agreement in writing (the agreement) with the defendant (Mr. Power).

5. At the time of the execution of the agreement, there were proceedings in being before this court in which Mr. Power was the plaintiff and the O'Connors were the defendants. The agreement was executed by way of settlement of those proceedings. It settled any prior outstanding issues between Mr. Power and the O'Connors. It also provided for the striking out of the earlier proceedings. That was done by order of the court of the 16th April, 2007.

The Agreement
6. The agreement recites that the O'Connors are the owners of lands comprised in two folios of the Register County Wexford. Under it, the O'Connors gave Mr. Power an option to acquire part of the lands in one of the folios and all of the lands in the other, for a sum of €8,125,000. The option was granted subject to compliance with each and every condition of the agreement and on the payment of a non-refundable sum of €50,000.

7. The option had to be exercised on or before the 30th May, 2007, unless it was extended in accordance with the terms of the agreement.

8. On the exercise of the option, the agreement for sale attached to it and executed by Mr. Power was to be delivered to the O'Connor's solicitor together with a bank draft for the €8,125,000. The delivery of the signed unaltered contract and bank draft was to be, in effect, the completion of the purchase of the lands in question, subject only to the delivery of certain documents of title referred to in the documents schedule.

9. Under para. 2(e) of the agreement, Mr. Power covenanted with the O'Connors to have the existing proceedings between those parties struck out as soon as possible after the signing of the agreement with no order as to costs in respect of them. The paragraph then continued:-

> "It is further agreed by the Grantee that this agreement contains the entire agreement between the Grantee and the Grantor and acknowledges that any prior outstanding issues have been settled between the Grantee and Grantor."

10. Under the agreement, Mr. Power is the Grantee and the O'Connors the Grantor. The plaintiff's solicitor, Mr. Keller, gave evidence before me, which I accept, to the effect that this clause was inserted in the agreement at the behest of Mr. Power's then solicitor.

11. The agreement also provided that if the option date provided for in it expired with no contract for sale and bank draft having been furnished, then the agreement was to be null and void.

12. Under Clause 6 of the agreement, the O'Connors were obliged to, and did, in fact, execute a power of attorney in favour of their son-in-law, Mr. Paul Teece. It was a power of attorney which merely entitled Mr. Teece to perfect any documents which for any reason due to destruction, loss or otherwise, might be required to complete the transaction.

13. Clause 8 provided the mechanism for extending the option period. It reads:-

> "8. (i) In the event that the Grantee wishes to extend the option period for a further month until the 30th June, 2007, the Grantee shall lodge with the Grantor's solicitors the sum of €25,000 on or before the 30th day of May, 2007, and in the event of him so doing the option period shall be deemed to expire on the 30th June, 2007;
>
> (ii) In the event that the Grantee wishes to extend further the option period – beyond the 30th day of June, 2007 – the Grantee shall lodge with the Grantor's solicitors a further sum of €50,000 on or before the 30th of June, 2007 and in the event of him so doing the option period shall be deemed to expire on the 30th July, 2007."

14. It is not in dispute but that Mr. Power successfully extended the option period in accordance with Clause 8 (i) and (ii). The option, therefore, was due to expire on the 30th July, 2007.

15. The agreement did not provide for any further extension of the option period.

These Proceedings
16. The principal relief sought by the O'Connors is a declaration that the agreement has expired. They also seek a declaration that the defendant has no rights to or claim regarding the property the subject of the agreement. They also claim a declaration that they were entitled to deal with the property on the basis that the defendant has no claim whatsoever in respect of it.

17. For reasons which will become apparent later, it was extremely difficult to try and ascertain what, in fact, was the defence to these proceedings, if any. At various stages during the trial, Mr. Power's counsel articulated lines of defence, many of which were inconsistent one with the other.

18. One line of defence can be gleaned by reference to what is pleaded at paras. 5 and 7 of the Defence and paras. 15 and 16 of the Counterclaim. There it is alleged that there was an agreement to vary the agreement so as to provide for an extension of time for the option period up to the 10th August, 2007. That variation is alleged to have occurred by virtue of an agreement made between Mr. Teece, on behalf of the O'Connors, and Mr. Power. This is really the only line of defence that emerged with any clarity and so I propose to deal with it at this juncture. Later in this judgment, I will be returning to other elements of the defence and the way in which they were advanced.

Was the Agreement Varied?

19. There is no doubt on the evidence but that an approach was made to Mr. Teece by Mr. Power seeking to have the option period extended beyond the 30th July, 2007. The agreement did not provide for any such extension. If there was to be such an extension it would require a variation of the agreement. The normal rules concerning such variation would apply e.g. the necessity for consideration to support it.

20. The evidence satisfies me that Mr. Power made contact by telephone with Mr. Teece on the 21st or 22nd July, 2007. At that stage, of course, the option remained alive. Mr. Power indicated that he could do with an extra ten days extension of time to the option. Mr. Teece quite properly said that he would have to go to the O'Connors in relation to that and have such an extension authorised by them. He did so and the O'Connors were unequivocal in their response. They were not interested in any further extension of time and refused it. In addition, Mrs. O'Connor told Mr. Teece to contact their solicitor in view of the past dealings that they had had with Mr. Power. She told him to obtain that solicitor's advice. Mr. Teece did so on the 23rd July. The O'Connor's solicitor was equally unequivocal in his advice to the effect that there should be no further extension of time. Mr. Teece then telephoned Mr. Power on either the 23rd or 24th July and told him of the decision.

21. I am quite satisfied that at no stage did the O'Connors ever agree to a variation of the contract so as to permit of an extension of the option period beyond the 30th July, 2007.

22. Mr. Power could have been in no doubt about this. Not merely was he told that by Mr. Teece, but on the 25th July, 2007, the O'Connor's solicitor wrote to his then solicitor. The letter (which was sent by e-mail and post) pointed out that the option was due to expire at the end of July, 2007, unless signed contracts with the bank draft for the €8,125,000 were returned. The letter went on:-

> "For the sake of clarity, we wish to categorically state that our clients are not agreeable to any extension of the time periods referred to in the option agreement and if your client wishes to acquire this property then he would have to (sic) fulfil the terms of the memorandum of agreement entered into on the 30th March, 2007, and specifically comply with the timeframe specified therein."

23. This was followed by a letter from Mr. Power's then solicitors in the following terms:-

> "We understand that our client had reached agreement last weekend with your client's representative, wherein he would sign the contracts for the purchase of the land on the 30th, with a period of grace up to the 10th August would be forthcoming, (sic) to enable completion to take place.
>
> We note that your instructions currently are that this agreement did not come into effect.
>
> We confirmed (sic) to date our client has secured the facility in the sum of €5,980,000 and we enclose for your information copy of the aforesaid facility letter from Mathon.
>
> Our client is currently in discussions with view (sic) towards securing the balance of the purchase monies and the stamp duty, which he hopes will conclude satisfactorily over the next short number of days. We would be obliged, accordingly, if you would confirm that our client can execute the agreement on the 30th with a payment of the money deferred to no later than the 10th August. We would be obliged if you would take your client's instructions.
>
> You might please revert at your very earliest convenience."

24. The rather curious facility letter enclosed in copy form is, in fact, for the amount of €6,500,000 but only for a term of three months.

25. In any event, the response to this letter came from the O'Connor's solicitor on the 31st July, 2007. The relevant parts of the letter (which was sent by fax) read:-

> "As indicated, our clients are not agreeable to extending the timeframe of the option period and if your client intends to proceed, executed contracts, together with bank draft in respect of the full purchase price, should be received by our office by close of business today. If signed contract together with purchase funds are not received, then all matters between our clients will come to an end and as you will be aware it will be a matter for our clients to deal with the property thereafter as they deem appropriate."

26. That was followed by a further letter on the 1st August in which the O'Connor's solicitor noted that he had not received executed contracts or a bank draft for the full purchase price and went on:-

> "In the circumstances the agreement entered into between our respective clients on the 30th March, 2007 is now at an end."

27. I find as a fact that there was never any agreement for any form of extension of the option period beyond that provided for in the agreement.

The Defendant's Letter

28. Following the O'Connor's solicitor's letter of the 1st August, 2007, nothing more was heard from Mr. Power. The O'Connors put the lands on the market and ultimately negotiated their sale to a company called Myroncourt Ltd.

29. What has brought about this litigation is a letter written by Mr. Power on the 9th October, 2007, which he sent to the O'Connor's solicitor.

30. The letter reads:-

> "Re: Lands at Coolcots Co. Wexford
>
> It has come to my attention that the option agreement dated the 30th March, 2007, between myself and Patrick and Eileen O'Connor of Coolcots County Wexford, is tainted with deceit and illegality especially in terms of the parcel of land concerned.
>
> Consequently, all terms and conditions of the option agreements are null and void. Therefore, legal proceedings between myself and Patrick and Eileen O'Connor are going ahead.
>
> Accordingly, relevant monies will be apportioned between the parties in due course. As would be fair and reasonable.
>
> In the meantime, I require that you, as solicitors for Patrick and Eileen O'Connor, disclose this dispute with regard to the lands to any parties who attempt to purchase these lands, to ensure that they are on notice of this dispute."

31. As Mr. Power failed to turn up to give evidence at the trial, I did not hear from him in relation to the writing of this strange letter. However, it is quite clear from the evidence given to me by his solicitor, who remained on record in this case until the second day of the trial, that this letter did not emanate from his office. It would be interesting to know if this letter was composed solely by Mr. Power or if he had assistance from some other person. Certainly he did not get it from his solicitor.

32. The letter was responded to the next day in strong terms by the O'Connor's solicitor. He said:-

> "We refer to your letter handed into our office yesterday evening. We categorically dispute that there was any form of deceit or illegality in relation to the option agreement entered into between you and our clients.
>
> Failing hearing from you immediately confirming that you understand that you have no claim against our clients or their lands at Coolcots, we intend to immediately issue proceedings seeking an order confirming that you have no claim whatsoever in relation to the lands and damages. If necessary, we will also take injunctive proceedings.
>
> In the event that it is necessary to issue any such proceedings, our client will seek to recover all costs and expenses including any consequential loss from you and we will use this letter as evidence to ground the application for such costs and compensation. In that regard, please note that should these proceedings or your claim in any way prejudice the sale of the lands which our client has negotiated, than we will also be seeking to hold you responsible for same.
>
> We would suggest that you take legal advice immediately in relation to this matter."

33. That letter was sent to Mr. Power personally. A copy of it was sent to his then solicitors. That firm did not represent him in these proceedings.

34. The letter has never been withdrawn by Mr. Power. He failed to turn up at the trial to give any explanation in respect of it. The letter could not be ignored in the context of a contemplated sale to a third party having regard to its terms and the previous dealings which the O'Connors had with Mr. Power.

A Crank

35. One of the many extraordinary features of the defence of this case was the suggestion by Mr. Power's counsel that her client's letter could be ignored as the writings of a crank. If that was so, then Mr. Power could have saved himself a lot of trouble by withdrawing it but chose not to do so.

36. As a further indication of the bizarre nature of this submission, counsel purported on many occasions during the course of the hearing to, in effect, stand over the contents of the letter.

37. I am satisfied that the plaintiffs were perfectly justified in bringing these proceedings, particularly in the light of their earlier dealings with Mr. Power. Those dealings were not before this court and were irrelevant to the issues that I had to try but it was plain from the evidence that I heard that there was little trust between the O'Connors and Mr. Power. From what I have seen of his behaviour in this case I can well understand why that should be so.

The Conduct of this Litigation

38. These proceedings commenced on the 24th October, 2007. They were served on the defendant on the 26th October, 2007. Adam A. Suzin, Solicitor entered an appearance on the 6th November, 2007.

39. Mr. Suzin gave evidence before me on the second day of the hearing in support of his application to be discharged from the record. I have great sympathy for the position in which Mr. Suzin found himself. At that stage, his client had failed to turn up for the hearing and counsel instructed by him had done likewise. I will return to these aspects of the matter later.

40. The evidence of Mr. Suzin made it clear that when he entered an appearance for Mr. Power and became involved in the case, counsel was, to use his own phrase, "already on board". Mr. Suzin continued to instruct that counsel on the instructions of Mr. Power. It is a rather unusual state of affairs where counsel is "on board" before a solicitor commences representation of a litigant. It is not the only strange feature of the behaviour of counsel in this case.

41. By motion dated the 21st November, 2007, which came on for hearing on the 10th December, 2007, the plaintiffs applied to have the case transferred to the Commercial List. The application was opposed by the defendant through his counsel. The opposition was not successful. On that date, I made an order pursuant to the provisions of O. 63(A) r. 1(a) (i) of the Rules of the Superior Courts transferring the case to this list. I gave the usual directions concerning an exchange of pleadings and discovery. As the Statement of Claim had been delivered on the 4th December, I allowed until the 21st December for delivery of the Defence but that order was not complied with.

42. The order of the 10th December, 2007, was made following an *inter partes* hearing with both sides represented by counsel. Later

on that day, counsel for the defendant returned to court, having given no notice to the other side and on an *ex parte* basis attempted to readdress items that had been dealt with in the earlier *inter partes* hearing and in the order. I pointed out to her that no such application could be entertained in the absence of notice being given to the other side and that the order as pronounced stood.

43. It should not have been necessary to point out to counsel that she should not attempt *ex parte* to address issues which had been decided *inter partes*. The fact that I did so appeared to make little or no impact on her because she repeated this behaviour again in circumstances which I will address later.

44. The Defence was, in fact, delivered on the 4th January, 2008 and contained a Counterclaim. I will return to this document later in this ruling.

45. The Reply to the Defence and Counterclaim was delivered on the 15th January, 2008, so that by the time the matter came back before the court for further directions on the 21st January, 2008, the pleadings had closed.

46. At the hearing on the 21st January, 2008, there was no appearance in court by counsel for the defendant. Mr. Suzin's evidence made it clear that he had no idea why that was so. To use his own expression, he had "not been able to fathom" why counsel instructed on behalf of the defendant did not appear on that occasion.

47. On the 21st January, 2008, I fixed the trial to commence on the 22nd April and directed the plaintiffs to deliver witness statements within four weeks of the 21st January. A similar period was given to the defendant. The plaintiffs were then allowed two weeks from the delivery of the defendant's witness statements within which to deliver written submissions and a like period thereafter was given to the defendant.

48. A notice for particulars arising from the Defence and Counterclaim was served on the 15th January, 2008. That was not responded to timeously and so the plaintiffs had to bring a motion to compel replies to it.

49. Most unusually in the Commercial List, the defendant failed to deliver his witness statements thus necessitating the issue of a further motion by the plaintiff on the 28th March, 2008, returnable for the 7th April, 2008. The witness statements ought to have been delivered by the 24th March, 2008. A single statement was ultimately produced, but not until the morning of the hearing of the motion. The statement was from the defendant himself but ended by indicating an intention to subpoena witnesses from no fewer than twenty six different entities including:

> "1. Members of the O'Connor family,
>
> 2. Members of Wexford County Council,
>
> 3. Executives of Wexford County Council,
>
> 4. Wexford County Council Accountants,
>
> 5. Legal advisors for the plaintiff,
>
> 6. Legal advisors for the defendants,
>
> 7. Local Government auditor,
>
> 8. Personnel from the Revenue Commissioners,
>
> 9. Registrar of Deeds personnel,
>
> 10. Personnel from the Land Registry,
>
> 11. Personnel from Horse Racing Ireland,
>
> 12. Personnel from the Turf Club,
>
> 13. Secretary to Ethics Committee in Public Office,
>
> 14. Relevant members of Fianna Fáil Advisors on Ethics,
>
> 15. Relevant member of the Garda Fraud Bureau of Investigation,
>
> 16. Department of Environment personnel."

50. (None of these people, or anyone from the remaining ten categories described, was, in fact, called to give evidence at the trial.)

51. On the hearing of the motion, counsel on behalf of the defendant laid part of the blame for the late production of the witness statement on her instructing solicitor, pointing out that he is a one man practice.

52. Mr. Suzin, in his evidence before me, had this to say on that allegation made by counsel:-

> "During that time, I was in full attendance upon my office at all times and doing my best endeavours to procure the witness statement, which, again, was not drawn up in my offices but by client and counsel for, again, reasons which are unknown to me. But nevertheless, at no time could I accept, Judge that my office was at fault in the failure to that. Now, of course, reference was made to it, and, again, I was not in attendance when the reference was made. But, clearly, in my respectful submission, it is utterly false to lay blame in part to me for that failure. That is the only other point that I wish to just place on record with you."

53. It was clear that Mr. Suzin was greatly upset by this "utterly false" allegation made by counsel against him. He went on to point out that he was aware that the defendant was meeting with counsel and was procuring a witness statement but that was not done

on his advice. This again underlies the unorthodox relationship between Mr. Power and his counsel to the exclusion of the solicitor on record. It raises questions which may have to be addressed by another body.

54. The delay in obtaining the defendant's witness statement meant that the schedule which was sent forth in my order of the 21st January, 2008, could not be adhered to with each side having two weeks in which to deliver their submissions. The plaintiffs delivered theirs on the 16th April, 2008. They were comprehensive and in the form that this court is used to receiving.

55. By the day before the trial, no submissions had been produced by the defendant.

56. At the conclusion of my motion list that day (which was a Monday), the defendant's counsel, again without any notice to the other side, applied in effect to adjourn the trial. The basis was that the two weeks allowed in the order of the 21st January for the delivery of written submissions had not expired. Alternatively, she indicated that she would deliver her submissions after the trial had been completed. I made it very clear that there would be no adjournment of the trial and that the written submissions would have to be delivered prior to it. All of the delay had been caused by her client. Later that day, a single page document purporting to be a legal submission was furnished to the court.

57. It was at this stage quite clear to me that from the outset the defendant had attempted to frustrate the O'Connors' efforts to get their case on for trial. I attach no blame to Ms. Suzin in that regard. It will be for another body to decide what part Mr. Power's counsel may have played in his delaying tactics.

58. Given all that had happened, I cannot say that it was entirely surprising when a further adjournment application was made on the morning of the trial's commencement.

The Trial
59. At the commencement of the hearing, counsel for Mr. Power applied for an adjournment. She did so on the basis of a medical certificate which was contained on a single sheet of un-headed paper.

60. In it, the doctor said that he had examined Mr. Power the day before the trial and in his opinion he had a reoccurrence of a previous back complaint and was unfit to attend court proceedings for at least a week. I refused to adjourn the trial. I did so for a number of reasons. First, I was conscious of the fact that the elderly plaintiffs were in court ready to proceed and that Mr. Teece had travelled from England to give evidence. Second, I was satisfied that in order to have a fair trial of the matter, it was not necessary that the defendant be physically present for the first day of the hearing. This was so because all of the Commercial List procedures had been complied with by the plaintiffs. Thus, at that stage, the defendant had had the advantage of seeing all of the evidence which was going to be called by the O'Connors. They did not confine themselves to providing a précis of evidence but in fact supplied full statements of evidence. Thus, the defendant was fully au fait with the evidence which the O'Connors would be adducing. Third, having regard to the defendant's conduct to date, I was not convinced that he was genuinely unable to attend court. Subsequent events confirmed my views in that regard to be correct.

61. Thus the trial proceeded. I will be returning to what actually happened in the trial later in this ruling. It is, however, now convenient to deal with the defendant's alleged medical difficulties and his counsel's conduct.

The Second Day
62. At the conclusion of the first day of the trial (a Tuesday), all of the plaintiff's evidence had been given. I adjourned the further hearing of the trial to the Thursday so as to enable one of two things to occur. Either I required the presence in court of Mr. Power's General Practitioner to give me evidence concerning his condition or, if Mr. Power was fit to give evidence, I indicated that he should be present so that the trial could continue. I made an order for the attendance in court of the General Practitioner.

63. The Registrar of the court communicated with the General Practitioner who, of his own motion, issued a further medical report on Mr. Power.

64. That medical report made it very clear that Mr. Power would, in fact, be fit to attend court on the Thursday and had been advised to do so by his doctor. The doctor also made it clear to the Registrar of the court that Mr. Power had presented himself at his surgery at 7.30pm on the evening before the trial (after the *ex parte* adjournment application had failed) with a complaint of back pain. The doctor informed the Registrar that Mr. Power had not told him of the fact that he was a defendant in High Court proceedings, but rather left the doctor under the impression that there was some minor matter before the courts. In any event, the doctor, in his second medical report, was unequivocal in his view concerning Mr. Power's fitness to attend court on the adjourned date. On the basis of the doctor's second medical report and the information that he furnished to the Registrar, I excused him from attending court on the Thursday. He asked that this be done because of his commitments to patients on that day. I fully expected that Mr. Power would attend but he chose not to do so.

65. It is clear from what I was told by Mr. Suzin that he had received a telephone call from Mr. Power on the day before the trial indicating that he was unwell. Mr. Suzin explained to him that if he wished to avoid attending in court he would have to be:-

> "In a state that would prohibit you from actually giving evidence and there would be rare circumstances where you would be so unwell for that to be the case".

66. Armed with that advice, Mr. Power went to the doctor and procured the certificate. I make no criticism of the doctor who was rather annoyed at the way in which he had been dealt with by Mr. Power. Indeed, I should record that the doctor even telephoned Mr. Suzin on the morning of the second day of the hearing to confirm Mr. Power's ability to attend court.

67. All that I heard, both from the doctor and from Mr. Suzin, confirmed my suspicions that the attempt to adjourn the trial was yet another stalling tactic by Mr. Power.

68. On the second day of the hearing, not merely did Mr. Power not turn up, despite having been advised to do so by both his solicitor and his doctor, but neither did his counsel. Thus, Mr. Suzin was left in what he himself described as "the unenviable and unchartered territory having neither a client nor counsel".

69. Mr. Suzin told me that he'd used his best endeavours to speak to counsel on the preceding day but could not make contact directly with her by mobile phone. He did, however, receive a number of texts to say that she was not attending court and that she was withdrawing from the case. He replied by text. He pointed out to her, quite correctly, that counsel is under a duty to come to court and that it is not possible for counsel to withdraw from the case given that the trial was part heard. As he said himself:-

> "I could not countenance the idea that counsel would not attend. I have done everything I can, judge, since this became known to me yesterday, and even this morning, in the early hours of this morning tried to make contact with counsel to advise against such a course of action. But, clearly, this court can see counsel is not here."

70. I have never known of a case where counsel abandoned a trial such as occurred here. She did so despite the entreaties from her instructing solicitor who quite properly pointed out that it was not open to her to do so.

71. I now return to the first day of the trial and the evidence that was given then.

The First Day

72. I have already dealt with aspects of the evidence and my findings thereon insofar as they relate to those parts of the defendant's defence which were understandable.

73. This was an extremely difficult trial to preside over because of the behaviour of the defendant's counsel in refusing to accept the rulings of the court, her constant interruption of counsel for the plaintiff and myself, to say nothing of the allegations of impropriety which she freely made. Her attempts to shout me down and her persistent flouting of the ordinary rules of courtesy and behaviour in the conduct of litigation were quite unacceptable. Her making (and placing on the record of the transcript, as the plaintiff's counsel pointed out) of incorrect and unfair allegations was equally unacceptable. I do not propose to address these matters in any detail save to recount that I have never presided over a case where counsel behaved in anything like this fashion.

74. Consistently and persistently counsel for the defence sought to cross examine witnesses and raise issues dealing with events all of which had been compromised by the agreement and in particular Clause 2(e) which had been inserted at the defendant's behest in which he acknowledged "that any prior outstanding issues have been settled between the Grantee and the Grantor." Counsel sought to go back and to attempt to agitate matters pertaining to earlier arrangements (some of them years old) between the parties. I disallowed this line of questioning because there was no claim made seeking to have the agreement set aside.

75. It was difficult to know precisely what the counterclaim amounted to but it can be said with complete certainty that nowhere did it seek to have the agreement in suit set aside. I was therefore not prepared to allow cross examination pertaining to events going back years which, under the terms of the agreement, had already been settled. That ruling had to be made numerous times because of the defendant's counsel refusal to adhere to it.

76. She also attempted to raise issues of deceit. I found it impossible to know precisely what her point was in this regard particularly in the absence of any counterclaim seeking to have the agreement set aside on such grounds. At one stage during her various mutually contradictory answers, she appeared to accept the common sense in her client not wanting to have anything to do with these lands if he genuinely believed that there was some deceit attendant on them. If he believed that to be so, one would have expected him to counterclaim to have the agreement set aside and the return of the monies which he paid for the option. No such relief was claimed.

77. There was no evidence whatsoever of any deceit.

78. I was satisfied, for the reasons which I have already given, that the agreement had not been varied so as to provide for the extension of the option period. The O'Connors were quite justified in not regarding the letter which triggered these proceedings as the writings of a crank. Nowhere in Mr. Power's pleadings did he seek to have the agreement set aside on any ground. Neither did he seek to have the return of the monies paid by him. I was not prepared to allow his counsel to cross examine about matters which had been settled under the terms of the agreement.

79. Mr. Power chose to absent himself from court. There was no valid reason to excuse his non-attendance. He offered no evidence. None of the numerous witnesses alluded to in his witness statement were called.

80. That being so, I found for the plaintiffs and made the relevant orders in their favour.

81. Having regard to the behaviour of Mr. Power's counsel, it is my intention to furnish a copy of this judgment to the Chairman of the Bar Council so that he may consider its contents.