



THE COURT OF APPEAL

[2015] IECA 39

Kelly J.
Irvine J.
Hogan J.

Appeal No. 2014/18

Between

St. Canices's Kilkenny Credit Union Limited

Plaintiff

and

Monica Molloy

Defendant

Judgment of Mr. Justice Kelly delivered ex tempore on the 2nd day of February 2015

1. This is the application of Monica Molloy who is the defendant in these proceedings which were before the High Court in 2013. She now seeks from this Court an extension of time within which to appeal against an order which was made by Dunne J. in October 2013.
2. The background to the case can be summarised as follows. Ms. Molloy has a debt which she owes to St. Canice's Kilkenny Credit Union Limited. It brought proceedings against her in the High Court and recovered a judgment for a sum of €119,000. It converted that judgment into a judgment mortgage and in due course applied to the High Court for an order that the mortgage was well charged on her interest in lands which are registered in her name. That order was made in its favour on the 7th October, 2013. The order follows the usual pattern of what one would call a "primary order". It declared that the monies were well charged on the lands and it ordered that in default of the payment of them, the lands be sold at such time and place and subject to such conditions of sale as would be settled by the court. Dunne J. then went on to direct the Examiner of the High Court to conduct accounts and inquiries, two of which I mention. The first is an account of all encumbrances subsequent as well as prior to and contemporaneous with the plaintiff's demand and second, that an inquiry as to the respective priorities of all such demands. The matter has proceeded before the Examiner in accordance with that order.
3. Ms. Molloy does not deny that she owes the money to the credit union, but she seeks nonetheless to appeal the order of Dunne J. I have to say that it is not immediately apparent to me what advantage there would be to her even if the extension of time were granted, but first of all I must deal with the application for the extension of time on its merits.
4. Applications for extensions of time within which to appeal are frequently made to this Court. The Court has to exercise a discretion as to whether or not to grant such applications. There is a body of case law which indicates matters which the court ought to take into account in deciding whether or not to grant such an order.
5. They are summarised in a number of decisions, one of which is 60 years old and the name of that case is *Eire Continental Trading Company v. Clonmel Foods* [1955] I.R. 170. There, three conditions are mentioned as being worthy of consideration by the court in deciding whether or not to grant an application of this sort.
6. The first is that the applicant has to show a *bona fide* intention to appeal formed within the permitted time. Second, it must be demonstrated that something like a mistake occurred and that is the reason for the delay having taken place and thirdly it must be established that there is an arguable ground of appeal.
7. In the course of her two affidavits, a number of issues are identified by Ms. Molloy which she says constitute grounds of appeal. The first, she said was that Dunne J. was wrong in deciding that the property in question was not a family home. It is clear that no such decision was in fact made by Dunne J.. It would be most unusual for such to arise on an application of the type that she dealt with in October 2013, but it is clear on the face of her order that no such determination was made. Second, Ms. Molly says that Dunne J. was wrong in deciding that the money claimed by the credit union was rightfully owed. In fact she did not make any such determination. That determination was made long prior to the 7th October, 2013, when judgment was obtained by the credit union against Ms. Molloy. It is clear from her affidavits that she does not deny that she owes that money. Therefore neither of those two matters could constitute a ground of appeal. Third, she says that Dunne J. was wrong in providing for interest. All that the judge did was to carry out what the statute ordains, because once judgment is entered it automatically carries interest as prescribed by the Act. Insofar as Dunne J. is concerned in providing for interest, she was doing no more than reciting what was already provided for automatically by statute. Finally, Ms. Molloy said that the judge was wrong in directing that judgment for the monies be secured on the property in favour of St. Canice's Credit Union. She does not deny that she is the registered owner on the folio in question. The judgment mortgage affidavit was in respect of her interest in that folio and consequently there is no basis upon which she can say that the judge was wrong in so deciding. So, it is clear that that third of the three matters identified in the *Eire Continental* case has not been made out. Ms. Molloy has not demonstrated an arguable ground of appeal.
8. In my view neither has she satisfied the first two proofs either. It must be borne in mind that the order in question was made as far back as October 2013. On her own affidavit Ms. Molloy says that she was not aware of her right to appeal the well-charging order until a long time thereafter, so it would be impossible to form an intention to appeal within the permitted time. But even if she formed the intention to appeal within a reasonable period of becoming aware of her right to do so, she has not moved with the necessary speed with a view to giving effect to that intent.
9. There is no demonstration of anything like an appropriate mistake on the part of Ms. Molloy. But even if she satisfied the first two tests and I put those to one side, I am quite satisfied that she has not demonstrated an arguable ground of appeal.
10. What she is concerned about, and it is an understandable concern, is that her property, she accepts, can be legitimately utilised

to discharge her debt. But she does not want her parent's property (Mr. and Mrs. Poole's property) to be utilised to discharge her debt. What she says to us here in court is that at some stage in the past she gave instructions to her family solicitor to give effect to a transfer to her parents of part of the lands which are described in her folio and that those instructions were not carried out.

11. It seems to me that if her parents have an interest in the folio that is likely to be a matter that is going to appear during the course of the accounts and inquiries being taken before the Examiner. But, unfortunately for her parents, they too are also in debt to the credit union and it has recovered judgment against each of them respectively for sums in excess of €100,000. What is more, the credit union has converted those judgments into judgment mortgages against whatever interest they may have in the folio which is in suit before the court here. Their own debts of course can be used to sell their own property and if they do have an interest in the lands described in this folio, it seems likely that those judgment mortgages will capture whatever interest they have and will in due course give rise to the sale of those lands. Nonetheless the point made by Ms. Molloy and her concern is well founded. She does not want her debt to be discharged by selling property which may well be in the beneficial ownership of her parents. But that is a matter which is not going to be dealt with on any appeal which she seeks to bring. It is a matter that is going to be dealt with before the Examiner of the High Court, either in the current judgment mortgage proceedings or in well charging proceedings brought against her parents in respect of the debts that they have with the credit union. It is more likely in the current proceedings which are before the Examiner.

12. For these reasons, I am satisfied that I ought not to accede to this application. It fails all the three tests which are set out in the *Eire Continental* jurisprudence. In particular it has not been established that there is an arguable ground of appeal. I do take the point that it would be improper if Ms. Molloy's debts were to be discharged by a sale of property which is not hers. The current position is that the relevant folio has her as the only registered owner. Even if her parents do have an interest in these lands it seems likely that that interest is going to be swallowed up by the judgments which they have against them at the suit of the credit union. For these reasons I am not be in favour of extending time and I believe that this application should be dismissed.

Irvine J.: I agree with Mr. Justice Kelly.

Hogan J.: I also agree with Mr. Justice Kelly and also agree in particular with his comments in relation to the situation regarding the folios and I would trust that that is something that will be addressed in the course of the Examiner's inquiries.