

THE HIGH COURT**2007 8143 P****BETWEEN****MAUREEN MOORE****PLAINTIFF****AND****JOHN MOORE, MARIE MOORE AND NADINE CHETTY****DEFENDANTS****Judgment of Miss Justice Laffoy delivered on the 1st day of July, 2010.**

1. On this application the first and second defendants seek an order adjourning these proceedings, which are listed for hearing on 13th July, 2010, to a date in the Michaelmas term or such other date as may be fixed by the Court. The application is opposed by the plaintiff.
2. There was a long procedural history to these proceedings, which were commenced by plenary summons which issued on 2nd November, 2007, before 10th May, 2010 when an order was made by the Court (Murphy J.) giving leave to the plaintiff to deliver an amended statement of claim. I consider what happened before the making of that order to be irrelevant to the issues which arise on this application.
3. Following the order of 10th May, 2010 an amended statement of claim was delivered by the plaintiff to the first and second defendants on 11th May, 2010. An amended defence was delivered by the first and second defendants on 26th May, 2010. The plaintiff's amended reply was delivered on 8th June, 2010 and on the same day the plaintiff furnished replies to particulars sought by the first and second defendants.
4. The matter was in the list to fix dates of the 17th May, 2010. On that occasion, the first and second defendants sought to have the matter adjourned to the next list of fixed dates on the basis that they required to raise particulars. That application was refused but directions were given in relation to delivery of particulars and the matter was put in the Court list for mention on 17th June, 2010 to ensure that the directions would have been complied with. The proceedings were then listed for hearing on 13th July, 2010. On 17th June, 2010 counsel for the first and second defendant sought leave to bring this application.
5. The proceedings arise out of the sale by the first and second defendants of premises in Dublin to the third defendant in 2002. The premises were, apparently, registered on a leasehold folio on which John Moore, the father of the first and second defendants, and the plaintiff, the stepmother of the first and second defendants, were registered as joint owners. The first and second defendants made title to the premises on the basis that they were the personal representatives of the surviving joint owner, their father, who died in 1996. In making title they produced a statutory declaration which exhibited a death certificate of a person of the same name as the plaintiff with an address in Dublin who died in 1995 at the age of 57 years.
6. In the amendment to the statement of claim it is alleged by the plaintiff that the first and second defendants obtained that death certificate, which they knew or ought to have known was not the death certificate of the plaintiff, and fraudulently relied on it to amend the register, meaning the register maintained by the Property Registration Authority, so as to reflect a false position whereby their father was shown as having, at the date of his death, been the sole person beneficially entitled to the premises, thus enabling them, as his personal representatives, to deal with the property and to dispose of the same to the third defendant, notwithstanding the interest of the plaintiff. In the amended defence, the first and second defendants deny that they knew or ought to have known that the death certificate was not the death certificate of the plaintiff. They deny that they acted fraudulently.
7. The basis on which the first and second defendants seek an adjournment is that in 2009, following a report to An Garda Síochána, a criminal investigation commenced in relation to allegations of fraud against the first and second defendants, who were interviewed by the investigating Gardaí. They have been informed that the investigations are complete and that the file has been sent to the Director of Public Prosecutions (DPP), whose decision as to whether to prosecute the defendants is awaited. The ground on which they seek to have the civil proceedings adjourned is that they "may be exposed to a risk of prejudice or injustice as in order to defend this action we may give evidence which might be considered voluntarily given", as deposed to by the first defendant. The first defendant has further averred that they have been advised that "we could not be certain that such evidence would not be admissible at a criminal trial and therefore we would effectively be waiving our privilege against self-incrimination". Therefore, it is contended that the civil proceedings may present a risk to a fair trial and breach of their constitutional rights under Article 38.1 of the Constitution. It is also contended that the evidence which they may give at the hearing of the civil action, if it proceeds on 13th July, 2010, could be used as the material factor in the decision of the DPP as to whether to prosecute or not.
8. It is also contended by the first and second defendants that the introduction of the allegation of fraud so late in the proceedings has created a situation which is "inherently wrong, unfair and potentially very prejudicial" to them in the defence of the civil action, prior to the decision of the DPP as to whether to prosecute. In relation to that contention, I am satisfied that the first and second defendants have been afforded ample opportunity to deal with the fresh allegation made by the plaintiff late in the proceedings, so that no prejudice arises from the lateness factor.
9. The Court was referred to three authorities on the priority of criminal proceedings and civil proceedings in relation to issues arising out of the same facts.
10. The first was the decision of the Supreme Court in *Dillon v. Dunne's Stores Ltd.* [1966] I.R. 397. In that case, one of the defendants in an action for false imprisonment sought and was granted an adjournment of the civil proceedings in the High Court on the ground that he was a witness for the prosecution in related criminal proceedings against the plaintiff for larceny which were pending before the Circuit Court, the first criminal trial having been aborted. In delivering judgment in the Supreme Court, Ó Dálaigh

C.J. stated:

"... no authority has been referred to which would warrant the Court in seeking to postpone [the civil action] until after the final determination of the criminal proceedings. As the plaintiff could not have had an order to postpone the criminal proceedings until the termination of her civil action, equally the hearing of the civil action cannot be required to await the conclusion of the criminal proceedings. No considerations of public policy are in question."

11. The decision in *Dillon v. Dunne's Stores* was considered by the Supreme Court in *O'Flynn v. Mid-Western Health Board* [1991] 2 I.R. 223 in the context of an allegation by the applicants in judicial review proceedings that the first respondent, the Mid-Western Health Board, had delayed in initiating the inquiry, which related to matters which had been the subject of a Garda investigation, the holding of which the applicants were attempting to prevent. Hederman J. stated (at p. 236):

"It remains to deal with the delay alleged on the Board's part. That complaint relates essentially to the length of time that the matter was with the prosecuting authorities. It is often thought in lay circles that a criminal investigation must take priority over civil proceedings and that civil proceedings must remain at a standstill while a matter is the subject of criminal investigation. That view may be correct and it may be an appropriate course to take in certain cases but it is not immutable. The decision of this Court in *Dillon v. Dunne's Stores Ltd.* [1966] I.R. 397 makes this clear. Nonetheless it is a reasonable explanation for the Board's delay in preferring the original complaints."

12. The issue in the most recent authority to which the Court was referred, *C.G. v. Appeal Commissioners* [2005] 2 I.R. 473, concerned whether the applicant's appeal against income tax assessments to the Appeal Commissioners should be adjourned, as he contended, pending the determination of criminal proceedings against him for failure to make tax returns, some of which were in respect of the same years as the income tax appeal. The High Court (Finlay Geoghegan J.) refused to grant an injunction restraining the Appeal Commissioners from proceeding with the appeal. Rejecting the applicant's contention that he would be prejudiced if the appeal were to go ahead, Finlay Geoghegan J. stated (at p. 482):

"On the particular facts of this appeal I do not consider that the applicant has established that there is a real risk of prejudice or injustice if he were now to be required to proceed with his tax appeal which warrants this Court granting an injunction even in respect of the appeals relating to the same years' assessment as the pending criminal charges. There is no evidence at present which suggests that the applicant will be required to give evidence of a self-incriminating nature at the hearing of the tax appeal. If there are different relevant facts then it is a matter to be considered and decided by the respondent, bearing in mind that it will be a matter for the trial judge at the criminal trial to ensure by appropriate rulings that there is no breach of the applicant's rights under Article 38.1 of the Constitution ..."

13. Likewise, in this case, there is no evidence before this Court that the first and second defendants would be required to give evidence of a self-incriminating nature at the hearing of these proceedings. If the DPP decides to prosecute, it will be a matter for the trial judge, by appropriate rulings, to protect the constitutional rights of the first and second defendants.

14. In any event, there is, as I pointed out at the hearing of the application on 28th June, 2010, a certain illogicality in the approach being adopted by the first and second defendants in merely seeking to have the matter listed for hearing in the Michaelmas term, when there is no evidence from which it can be inferred that the DPP will have made a decision in relation to the matter which was referred to him by the Gardaí one way or the other by the Michaelmas term. While it is reasonable to infer that the first and second defendants want to delay the trial of the action, it would not be reasonable to infer that their objective is to have it adjourned indefinitely, as the plaintiff contends. Nonetheless, on the evidence before the Court, even a delay until the Michaelmas term is likely to be prejudicial to the plaintiff, who is 71 years of age and in poor health, having suffered from cancer, and is immobile to a degree.

15. In the circumstances, the application to adjourn the matter to the Michaelmas term is refused.