



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 87

Kelly J.
Hogan J.
Mahon J.

No. 72/2014

Between

Allied Irish Banks plc

Plaintiff/appellant

and

Eileen Pierce

Defendant/respondent

Judgment of Mr. Justice Kelly delivered on the 22nd day of April 2015.

Introduction

1. I entirely agree with the judgment which has been delivered by Hogan J., but I wish to add some observations of my own. I do so because of the presence of some remarkable features in the way this litigation has proceeded to date.

The pleading point

2. The objection which was taken concerning the special endorsement of claim on the summary summons appears to have its genesis in what took place at a hearing before the Master of the High Court on the 13th March, 2014.

3. On that occasion it was apparently the Master himself who expressed his disquiet with the special endorsement of claim. He required submissions to be prepared on the point taken by him. That was so notwithstanding the absence of any evidence on the part of the defendant suggesting any prejudice being caused to her as a result of the alleged infirmity in the endorsement of claim.

4. In an affidavit sworn on the 25th April, 2014, by Mr. David Galvin on behalf of the plaintiff bank, he exhibited open correspondence from the defendant's financial advisers dated the 10th September, 2013 and written in the context of this litigation. That correspondence contained an open offer to settle the litigation and the defendant acknowledged her indebtedness to the bank in the sum of €781,000. Notwithstanding that evidence, the Master proceeded to conduct a hearing on the pleading point on the 10th July, 2014, and reserved his decision until the 16th October, 2014. It was on that day that he erroneously struck out the summons.

5. The notice of motion seeking leave to enter final judgment was first made returnable before the Master on the 11th July, 2013. Despite the absence of any affidavit being sworn by the defendant it took until the 16th October, 2014, before the matter was ultimately and wrongly concluded by the Master.

6. Not merely was the order which was made on that occasion incorrect, but it was made in excess of jurisdiction. If that were the first time that such occurred, it might be unremarkable. But it is not, as is clear from what follows.

Jurisdiction

7. Hogan J. has analysed the provisions of O. 37 and the role of the Master of the High Court under that order.

8. In my view, the position is crystal clear. The wording of O. 37 makes it plain that the Master has no jurisdiction in contested cases other than to transfer them for judicial determination before a judge.

9. The words of the rule are so clear that it is difficult to imagine how there could be any doubt about what they mean. But if there was any such doubt it was entirely addressed in the series of decisions which are referred to in the judgment of Hogan J. Those decisions go back as far as 1927, but two of them are of very recent vintage. There is the decision of Kearns P. in *Bank of Ireland v. Cawley* [2013] IEHC 484. In that case the President held that the Master has no jurisdiction to dismiss proceedings in a contested case. That decision was given on the 8th November, 2013.

10. The second case is the decision of Hogan J. in *ACC Bank plc v. Heffernan* [2013] IEHC 557. That judgment was delivered just four days before that of the President in *Bank of Ireland v. Cawley*. There Hogan J. made it clear that the Master has no jurisdiction to make final orders in contested cases and he further analysed the meaning of the expression "in order for hearing" where it appears in O. 37, r. 6. I agree with him that it means nothing more than a case being administratively ready for hearing. It certainly does not give the Master a jurisdiction to strike out a contested case. It matters not whether a contest is on fact or law or by reference to some alleged irregularity in the pleadings or proceedings, the Master has no jurisdiction to adjudicate on it.

11. Despite the clarity of the two judgments which I have cited, the Master, within months of their delivery, proceeded to do in the instant case precisely what it had been held he had no power to do by both Kearns P. and Hogan J.

12. The assumption by the Master of this non-existent jurisdiction delayed the progress of this litigation for well in excess of a year. It deprived the plaintiff of the ability to make progress in circumstances where, in the correspondence to which I have already referred, the defendant accepted through her financial advisers that she has a liability to the plaintiff for €781,000. During all that period of delay, interest has continued to accrue and costs have multiplied. None of that ought to have happened. It would not have happened if the clear judgments of the President of the High Court and Hogan J. had been followed.

Result

13. I concur in the view that this appeal must be allowed.

