

THE HIGH COURT

2011 380 JR

BETWEEN

UNA MARIAN MURPHY (ACTING IN HER CAPACITY AS ATTORNEY TO MR. DESMOND PETER MURPHY)

APPLICANT

AND

REGISTRY OF DEEDS AND PROPERTY REGISTRATION AUTHORITY

RESPONDENTS

AND

BY ORDER, PATRICK EMEK

NOTICE PARTY

JUDGMENT of Kearns P. delivered the 9th day of August, 2011

This is an application for judicial review in which the applicant seeks an order of *certiorari* to review and/or rectify alleged omissions or errors made by the Registry of Deeds and Property Registration Authority whereby the property interest in 14, Grattan Street, Dublin 2 was first registered then later vested in the Notice Party. The order is sought on the grounds that the heirs of all beneficiaries named in the Will of a Mr. Patrick Murphy who died in 1944 are entitled to a 1/6th share in the assets of his estate; more specifically, the order is sought on the grounds that Mr. Desmond Peter Murphy, who now resides in Australia, is the last surviving beneficiary named in the Will of Mr. Patrick Murphy, and as such is said to be entitled to a 1/6th share of the estate, which at present consists solely of the premises at 14, Grattan Street, Dublin 2. The applicant is a daughter of Desmond Peter Murphy.

BACKGROUND FACTS

The facts leading to this dispute arise out of the terms of a Will pertaining to the estate of the late Mr. Patrick Murphy, who died on the 19th October, 1944. The relevant terms of the Will indicate that Mr. Murphy sought to bequeath his interest in his estate to his Trustees upon trust for his six children in equal shares; a dispute now arises between the named beneficiaries and their successors-in-title as to their current entitlements to the estate's sole remaining asset, the premises at 14, Grattan Street, Dublin 2 (hereinafter "the Premises"). The submissions of the parties indicate that the deceased held a leasehold interest in the property limited to a term of years under a 1926 sub-lease.

On the 15th September, 1975, an assignment by deed of the premises was made to Mr. Patrick Emek, the notice party, registering him as owner of this leasehold property. Mr. Emek is the son of Miss Norah Murphy, one of the six named beneficiaries in Mr. Patrick Murphy's will. The assignment to him was registered by him in the Registry of Deeds in 1976 and bears the Book number 1975-125-17. Mr. Patrick Emek then later used his assignment to purchase a vesting certificate under the Landlord and Tenant (Ground Rent) (No2) Act, 1978. The Property Registration Authority issued the vesting certificate, No. 1217-86, to Mr. Patrick Emek on 27th August, 1986. Accordingly, Mr. Emek now holds title to the Premises in fee simple.

The applicant takes issue with the legality and validity of both of these transactions, and asserts that they contain defects amounting to fraud. By order of Peart J. dated the 23rd May, 2011, the applicant was granted leave to apply for judicial review.

THE APPLICANT'S SUBMISSIONS

The applicant, purporting to act on behalf of her father Mr. Desmond Peter Murphy, contends that assignment of the property to Mr. Emek was improper, and was effected without due care, as was the granting of the vesting certificate by the Property Registration Authority. She contends that both of the aforesaid transactions were executed without the knowledge or consent of Mr. Patrick Murphy's beneficiaries, who had lawful interest in the property under the terms of his will. Thus, she submits that this court should set aside the assignment made in 1975 and the issuance of vesting certificate in 1986, and order that the Property Registration Authority and Registry of Deeds investigate the matter further to ascertain whether the abnormalities she has purportedly uncovered amount to fraud.

In support of her submissions, the applicant has presented voluminous documentation resulting from her own extensive research and inquiries into the background circumstances which she believes may be relevant to her call for an "Inquiry" by the Court into this entire matter. However, that material does not require to be addressed in this ruling for the reasons hereinafter set out.

THE RESPONDENT'S SUBMISSIONS

The respondents have in turn sought relief from the Court. Counsel for the respondent submits that the leave be set aside and the application dismissed as being frivolous and/or vexatious and/or doomed to fail on the basis that they do not disclose a cause of action and are an abuse of process.

In seeking such an order, counsel for the respondent contended that the facts as set out in the relevant affidavits fail to disclose any cause of action against the respondents. Counsel points out that the deceased's interest in the Premises was limited to those of a lessee under a 1926 Sub-Lease. It is argued that the registration of assignment in 1975 and issuance of vesting certificate in 1986 do not affect this leasehold interest, as they pertain to an intermediate leasehold interest and to the freehold interest, respectively; thus, neither transaction complained of actually affects the rights and interests of the beneficiaries under his Will, and concern separate property interests in the Premises.

Counsel further submitted that, even if a stateable claim had been put forth, the application must inevitably fail on the basis of delay. Order 84 Rule 21 of the Rules of this court provide in pertinent part that:

"(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from

the date when grounds for the application first arose, or six months where the relief sought is *certiorari*, unless the Court considers that there is good reason for extending the period within which the application shall be made."

Thus, the applicant had six months from the registration of assignment and six months from the issuance of vesting certificate to seek to quash these respective actions of the respondents, assuming the dispute is justiciable, by means of judicial review. Counsel contended that the relevant time limits have been grossly and inordinately exceeded in this case with no justifiable explanation, and that the claim would inevitably fail on this ground alone if it proceeded to a substantive hearing.

Counsel for the respondent also asserts that matters dealing with the property entitlements of various beneficiaries are not matters which attract the remedy of *certiorari* and are not appropriately matters for court intervention by judicial review. In particular, it is argued that this is essentially a private dispute with no points of public law at issue. The complaint brought by the applicant concerns the respective rights and entitlement to the residue of the term of years created by the 1926 Sub-Lease and/or the subsequent administration of the late Mr. Patrick Murphy's estate; as set forth above, neither of the challenged transactions are adjudicative mechanisms amenable to judicial review, nor does either transaction affect the sub-leasehold interest held by the estate of the deceased and merely involve a private dispute as to superior title between the parties.

Counsel for the respondent also applies for this court to set aside leave to apply for judicial review. In support of this application, counsel refers to the judgment of Finlay C.J. in *G. v. Director of Public Prosecutions* [1994] 1 I.R. 374, setting forth the factors that an applicant for judicial review must satisfy on a *prima facie* basis in his or her submissions and affidavits:

- "(a) that he has a sufficient interest in the matter to which the application relates to comply with Order 84 rule 20 (4);
- (b) that the facts averred in the Affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review;
- (c) that on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks;
- (d) that the application has been made promptly and in any event within the three months or six months time limits provided for in Order 84, rule 21 of the Rules of the Superior Courts, or that the Court is satisfied that there is a good reason for extending the time limit."

Counsel for the respondents submitted that the applicant fails each of these tests.

DECISION

At the outset I must state my clear view that the applicant lacks *locus standi* to bring this application. She purports to act on behalf of her father who lives in Australia. No reason has been offered as to why he cannot himself prosecute any supposed claim he may have arising from his late father's will. The applicant has failed to produce a power of attorney or other documentation from her father which would indicate his support for the bringing of this application. For all the Court knows, he might be totally opposed to the course of action embarked upon by his daughter or be quite unaware of it. The application must fail on that ground alone.

The complaints of the applicant herein relate to the entitlements of the beneficiaries named in the will of Patrick Murphy who died on 19th October, 1944. It would appear that the sole interest of Patrick Murphy in the premises the subject matter of the 1975 assignment (*i.e.*, 14, Grattan Street) was to the residue of a term of years created by an Indenture of Lease made on 14th August, 1926. The 1975 Assignment did not relate to that leasehold interest.

The effect of registration of the 1975 Assignment does not adjudicate on any dispute between the parties to the said Assignment, either *inter se* or with any other person, as to any right or entitlement to the premises in question. The claim of the applicant (if any) does not therefore lie within the scope of judicial review. The act of the Registry of Deeds in registering the said Indenture is not amenable to such a remedy, nor can this court direct or undertake "an Inquiry" as sought by the applicant. Furthermore, the applicant conceded in court that the fact of the registration of the assignment had been known for many years going back to 1976, a fact which firmly precludes resort to a judicial review remedy in the light of the requirements of Order 84 of the Rules of the Superior Courts.

On 25th August 1986 the Land Registry issued a vesting certificate to the Notice Party pursuant to s.22 of the Landlord and Tenant (Ground Rents) Acts (No.2) 1978. This application was made with the consent of the owner of the fee simple pursuant to the provisions of Part III of the Act of 1978. The Notice Party made this application in his capacity as the person entitled to the residue of the term of years created by a lease of 1863, and the Registrar of Titles, being satisfied that the application to him pursuant to s. 20 of the Act of 1978 had been duly made, issued the Vesting Certificate. His only function was to ensure that the application had been made in prescribed form and was accompanied by the consent of the owner in fee simple. He was so satisfied and was thus entitled to issue the certificate which did not affect the entitlement of any person to the residue of the term of years created by the sub-lease of 1926.

As in the case of the registration of 1975 assignment, I do not believe the action of the Registrar of Titles in 1986 in issuing the vesting certificate is a matter amenable to judicial review. This court does not have jurisdiction to direct "an Inquiry" as sought by the applicant. Even if it had, no question of a remedy by way of judicial review could arise after the enormous delay since the time of issue of the Vesting Certificate.

The applicant does not appear to understand that the complaints she is endeavouring to make, ostensibly on her father's behalf, relate to a private dispute between her father and the Notice Party, and possibly other family members, as to their respective rights and entitlements to the residue of a term of years created by the lease of 1926 and in the administration of the estate of Patrick Murphy deceased. The applicant -or, more accurately, her father - can assert an interest under the 1926 lease by proceedings other than judicial review proceedings brought in a court of competent jurisdiction. Similarly the applicant may seek in other proceedings to set aside the assignment of 1975 and the vesting certificate of 1986, albeit that any such proceedings may well be now met by a plea that they are statute barred.

For all of these reasons I refuse the relief sought herein by the applicant and will grant the reliefs sought by the respondents herein