



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 88

Kelly J.
Hogan J
Mahon J.

No. 71/2014

Between

Allied Irish Banks plc

Appellants

and

Raymond Cullinane and Joan Cullinane

Respondents

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

Introduction

1. This is an appeal from an order of Binchy J. dated the 24th November, 2014. On that occasion the judge heard an application for summary judgment which had been transferred to his list by the Master of the High Court as it was a contested case.
2. The judge heard the application on the same day as he dealt with the case of *Allied Irish Banks plc v. Eileen Pierce* in respect of which judgments have just been delivered.

The pleadings

3. The endorsement of claim in this case is precisely the same in format as that which was in issue in *Allied Irish Banks plc v. Pierce*. The same firm of solicitors are on record for the plaintiff in both cases.
4. The same objection was taken as to the form of the special endorsement of claim in this case as was done in Pierce's case.
5. The judge, in his ruling, made it clear that he felt that he had to be consistent with what he had held in Pierce's case and accordingly he struck out both the motion and the summons in this case.

The appeal

6. The appellants appealed the entirety of the decision of Binchy J. In its written submissions, the plaintiff bank made it clear that it was not going to proceed with the appeal in respect of the striking out of the motion for judgment, but would limit itself to that part of the order that struck out the summons. That is the way in which the appeal proceeded.
7. The appeal in this case was heard concurrently with that in Pierce's case. The point taken in respect of the special endorsement of claim on the summary summons in this case is precisely the same as that which was taken in *Pierce's* case.
8. In my view this case, insofar as the endorsement of claim on the summons concerned, is on all fours with Pierce's case and is governed by the result in that case.

Disposal

9. For precisely the same reasons as applied in *Pierce's* case this appeal must be allowed. The special endorsement of claim conforms to what is required under the rules of court and is not defective.