Neutral Citation Number [2007] IEHC 134

THE HIGH COURT

[2006 No. 1995P]

BETWEEN

GREGORY FINNEGAN

PLAINTIFF

AND

GRAHAM RICHARDS AND PARAIC MADIGAN AS ATTORNEYS OF BARBARA ALLEN

DEFENDANTS

Judgment of Mr. Justice William M. McKechnie delivered on 20th day of April, 2007.

1. The Parties

The plaintiff by trade is an electrician and he resides at Ivy Hill, Emyvale in the County of Monaghan. The defendants, Graham Richards and Paraic Madigan who are solicitors in the firm of Messrs Matheson Ormsby and Prentice of 30 Herbert St, Dublin 2, are sued as attorneys of one Barbara Allen and as the persons who, on her behalf, obtained Letters of Administration with will annexed to the estate of the late Emma Teresa Clancy who died on 13th May, 2004.

2. Reliefs Claimed

In the substantive action Mr. Finnegan claims, that in the circumstances pleaded, he became entitled to the beneficial ownership of the dwelling house and premises known as "Retreat Heights", Glaslough, Co. Monaghan which was owned by the deceased at the time of her death. The defendants, after the delivery of the statement of claim issued a notice of motion dated 17th November, 2006 in which they seek from this court an order striking out the proceedings on the grounds that the same disclose no cause of action, are bound to fail, and otherwise constitute an abuse of process. They rely upon the courts inherent jurisdiction for this relief as well as calling in aid O. 19 r. 28 of the Rules of the Superior Courts. They make the application on two distinct grounds, the first being that at the date of the institution of the proceedings, no grant of administration had yet issued and accordingly the defendants lacked both the competence and capacity to be sued in a representative capacity. The second is the more conventional argument that the facts as pleaded fail to disclose any sustainable cause of action. This judgment deals solely with the matters raised by aforesaid notice of motion.

3. Background

On 22nd day of November, 1965, Emma Teresa Clancy made her last Will and Testament whereunder she appointed her husband, Padraic Clancy, as the sole beneficiary of her estate and also appointed him as the sole executor thereof. There was no issue of this marriage and her husband pre-deceased her. Accordingly, after her death on 13th May, 2004, one Barbara Allen, as her lawful niece became the person next entitled to obtain the right to administer her estate. This said lady duly appointed Graham Richards and Paraic Madigan to act as her attorneys in respect of all matters concerning the estate of the deceased person. Hence the naming of these individuals in the title of this action.

4. By letter, undated, but received on 22nd September, 2005, Messrs Daniel Gormley and Company, Solicitors, wrote on behalf of the plaintiff to Messrs Matheson Ormsby and Prentice, where the defendants are practicing solicitors. They alleged on behalf of Mr. Finnegan that by reason of "*inter vivos*" promises, made by the late Emma Clancy during the course of her life, the dwelling house and premises known as "Retreat Heights", became, after her death, his property and accordingly did not form part of the estate of the deceased person. Having called for an acknowledgment of this situation the letter concluded by stating "if such confirmation is not forthcoming from your office we have instructions to issue proceedings against the estate without further notice and would be obliged if you would indicate whether you have instructions to accept same".

5. On 2nd December, 2005, the plaintiff's solicitors wrote once again complaining about what they described as a "further trespass" by servants or agents of the defendants to "Retreat Heights". On 6th December, Matheson Ormsby and Prentice replied to that allegation, the details of which have no material bearing on the current application. In the said letter however they also stated

> "… notwithstanding that, you appear to be attempting to maintain that the matter has suddenly become urgent and requires injunctive relief, this is something which we simply do not accept. We confirm that we have authority to accept service of proceedings on behalf of our client. *We also confirm that we will vigorously defend any proceedings that issue in this regard* …". (emphasis added)

6. Sometime in April or early May 2006, Daniel Gormley & Co. checked with the Probate Office and ascertained that Letters of Administration had still not by that date, been taken out to the estate of the late Emma Teresa Clancy. They also found out that the grant would not issue "prior to the 13th May, 2006". The significance of this date and the potential problem of not having proceedings issued before then, were dealt with in their letter of the 5th May in the following matter:-

> "The late Emma Teresa Clancy died on 13th May, 2004 and it is essential that we issue legal proceedings on behalf of our client within the period of two years from the date of her death.
>
> Failing confirmation by return that you will accept service of proceedings on behalf of Graham Richards and Paraic Madigan as attorneys of your client Barbara Allen and <u>also confirm by open letter that no point will be taken by your client on the statute of limitations having run before the grant of administration issues to your clients</u> (sic)we are instructed to apply at the earliest possible date to the court to appoint an administrator *ad litem* without any further notice to you".

7. On 8th May Messrs Matheson Ormsby and Prentice replied by confirming

> "that we do have authority to accept service of proceedings on behalf of Graham Richards and Paraic Madigan. In relation to the issuing of the grant, we confirm that our client has responded to the queries raised with the Probate Office and that we are confident that the grant will issue in the near future".

On the 9th May, the Plenary Summons was issued and on the 15th an unconditional appearance was entered to it.

On 26th June, Letters of Administration issued from the Probate Office and by letter of the same date Messrs. Matheson Ormsby and Prentice called for the delivery of the Statement of Claim. On 13th July, a copy of the will of the deceased was furnished to the plaintiff's solicitors and again delivery of the Statement of Claim was requested. Further reminders in this regard were issued on 27th July, 2006 and on 20th September, 2006, of that year. Eventually on 27th September, the Statement of Claim was delivered. It was only some six weeks after this date that the relevant notice of motion was served.

8. The Statement of Claim
The following is pleaded in the Statement of Claim:-

> (a) That since 1987 the plaintiff rendered various services to and expended various moneys for and on behalf of Emma Teresa Clancy as well as entertaining her for dinner every Christmas. Most of the expenses actually incurred were recouped to him by the deceased. In 1987 and 1988 she gave the plaintiff £100 each Christmas.
>
> (b) At some unspecified date in 1989, Mr. Finnegan alleges that the plaintiff asked if he was wondering why she had not given him a Christmas gift that year as she had previously done. He answered that he was not and he then claims that the deceased said "The reason is I am going to give you this house, but that is between the two of us", or words to that effect. As and from that date it is alleged that Mrs. Clancy frequently referred to the house "Retreat Heights" as "our house", meaning of course to include Mr. Finnegan in the ownership thereof.
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> (c) A further conversation took place in April, 2004 when in the presence of Mrs. Finnegan it is alleged on behalf of the plaintiff that the deceased said "The house is yours. I am leaving it to you. It does not matter what anyone says. I don't want you to sell it. I want you to give it to one of your boys". Either then, or sometime shortly thereafter, the said Mrs. Clancy gave possession of the house to the plaintiff, including the title deeds and keys, and thereafter for the short period of her remaining life, she treated him with herself as the owner of the house.
>
> (d) It is also pleaded that the plaintiff relied on the aforesaid promises and that thereafter he rendered services to the deceased without reward and expended moneys in respect of which he neither sought or obtained reimbursement. Finally he also claimed that he acted "to his detriment on foot of these reliances".

9. Issues on this Application:
Against this background, and as set forth in para. 1 of this judgment, the defendants seek to have the plaintiff's cause of action dismissed on two separate grounds. Firstly they claim that as of the 9th May, 2006, when the Plenary Summons issued, they lacked the capacity to be named as representative defendants in these proceedings as the letters of administration with the will annexed had not issued by that date. Accordingly the proceedings were a nullity and could not be maintained. Secondly they allege that the facts as pleased in the Statement of Claim do not constitute a cause of action and accordingly the proceedings are bound to fail. This allegation is put in a number of alternative ways including a suggestion that such pleaded facts, are frivolous and vexatious, are an abuse of process and therefore either under the inherent jurisdiction of the court or else under O. 19 r. 28 of the Rules of the Superior Courts, the proceedings should be dismissed.

10. Issue No. 1
There is no doubt but that the plaintiff, in his pursuit of this action, was faced with the time bar as provided for in s. 9 of the Civil Liability Act, 1961. Under s. 9(2) no proceedings are maintainable against the estate of a deceased person unless either

> "(a) (the) proceedings against him in respect of that cause of action were commenced within the relevant period and were pending at the date of his death, or
>
> (b) (the) proceedings are commenced in respect of that cause of action within the relevant period or within the period of two years after his death, which ever period first expires".

As no proceedings were in being at date of death, the two year reference is the relevant time period in this case. Accordingly in order to comply with this provision the plaintiff had to have his proceedings instituted within two years from the 13th May, 2004. Hence the relevance of and the urgency displayed in the letter of 5th May, 2006, from Daniel Gormley and Co. to Messrs. Matheson Ormsby and Prentice.

11. The other related matter of concern, also dealt with in that letter, was the fact that no grant of administration had issued or was likely to issue prior to the 13th May, 2006. The relevance of this is that administrators may not have been appointed by that date, on whom the proceedings could be served. Section 13 of the Succession Act, 1965 was not designed to overcome this difficulty but its provisions did ensure that the estate of an intestate person or a person dying without a surviving executor, always vested in some person even in the interval between death and the issuing of a grant. This section, like its predecessors which go as far back as s. 15 of the Court of Probate (Ireland) Act 1859, nominates the President of the High Court for that purpose.

12. As I have said such a provision is necessary so as to ensure that at all times the estate of a person, to whom the section applies, vests in some individual and is not left without protection or homeless. The reason why such a state of affairs may occur is that an administrator derives his title solely from the grant of administration, quite unlike an executor upon whom the real and personal estate of a deceased person vests immediately upon the death of the testator. See *Woolley v. Clarke* (1822) 5 B and Aid. 744 and *Chetty v. Chetty* (1916) 1 AC 603. A grant of probate is necessary only to confirm the authority of the executor or otherwise to offer formal proof of his status. See *In Re Crowhurst Park* (1974) 1 WLR 583. The position of an administrator however, is as matter of general law quite different and until such time as a grant of administration is obtained, that person has no rights or entitlement to and otherwise has no control over the estate. This proposition is however subject to the doctrine of "relation back" which I will refer to in a moment. That situation can quite evidently pose considerable difficulties for an intending plaintiff, who when faced with the time period specified in s. 9 of the 1961 Act, might find out that no grant of administration has or will be extracted in time, so that no administrator, as such, exists. This in turn begs the question of who to name as a defendant in the proceedings.

13. In such circumstances a plaintiff can of course seek the appointment of an administrator *ad litem* for the purposes of issuing his proceedings. The availability of this course of action was confirmed by Costello J. in *Flack v. The President of the High Court*, High Court, Unreported, 29th November, 1983 where the learned judge said:-

> "Under the old law a person faced with the difficulties with which the plaintiffs in these proceedings were confronted was not without remedy: he could apply for and obtain the appointment of an administrator *ad litem* and join him as a defendant in this suit. The court has a similar power under s. 27 of the Succession Act, 1965 to make a grant limited to the defence of these proceedings".

That approach, in the circumstances which existed, was not however pursued by the plaintiff in these proceedings. That case is also of general interest for outlining what the actual role of the President is under s. 13, of the Act.

14. Asserting these general principles of law and relying upon *Ingall v. Moran* (1944) KB 160 and the decision of Laffoy J. in *Gaffney v. Faughnan*, [2006] ILRM 481, the defendants submit that since the Plenary Summons were issued some six weeks prior to the grant of administration, then the proceedings are not maintainable in view of the fact that the estate had not vested in them at the relevant time. In response to this submission counsel on behalf of the plaintiff alleges that the decision in *Gaffney v. Faughnan* [2006] ILRM 481 was made in *pen incuriam* in that the decision of the Privy Council in *Austin and Others v. Hart* [1983] 2 WLR 866, was not open to the court, and accordingly the resulting decision cannot be relied upon as confirming what *Ingall v. Moran* would tend to suggest. He also referred to *Allied Irish Coal Supplies Ltd v. Powell Duffyryn International Fuels Ltd* [1998] 2 I.R. 519 but I do not quite see the relevance of this case.

15. In *Ingall v. Moran* (1944) KB 160, the plaintiff sued as the administrator of his son's estate, seeking compensation for his wrongful death under the Law Reform (Miscellaneous Provisions) Act, 1934. There were two issues before the Court of Appeal, the first of which is the one of interest to us. It was alleged on behalf of the defendant in that case, that since the proceedings were a representative action they were never properly constituted in that Letters of Administration were not granted until 13th November, 1942, whereas in fact the writ issued on 17th September, of that year. Scott L.J., giving one of the judgments, pointed out that Mr. Ingall could only sue in a representative capacity but at the time of the writ he had no title to his son's surviving chose in action. As the writ was not maintainable at date of origin it was "incapable of conversion by amendment into a valid action" (see p. 3 of the judgment). By this he meant that although the plaintiff had in fact obtained Letters of Administration by the date of the defendants application to strike out, that fact could not retrospectively render valid that which was a nullity *ab initio*. He therefore dismissed the action. This conclusion was endorsed in separate judgments by Goddard LJ and Luxmoore LJ.

16. During the course of his judgment Luxmoore LJ also touched upon the doctrine of "relation back" which in effect is an exception to the general proposition that an administrator cannot sue until Letters of Administration have issued. At p. 167 of the judgment the learned judge said the following

> "It is, I think, well established that an executor can institute an action before probate of his testator's will is granted, and that, so long as probate is granted before the hearing of the action, the action is well constituted, although it may in some cases be stayed until the plaintiff has obtained his grant. The reason is plain. The executor derives his legal title to sue from his testators will. The grant of probate before the hearing is necessary only because it is the only method recognised by the rules of court by which the executor can prove the fact that he is the executor … an administrator is of course in a different position, for his title to sue depends solely on the grant of administration. It is true that, when a grant of administration is made the intestate's estate, including all choses in action, vests in the person to whom the grant is made, and that the title thereto then relates back to the date of the intestate's death but there is no doubt that both at common law and in equity, in order to maintain an action the plaintiff must have a cause of action vested in him at the date of the issue of the writ".

It appears therefore that whilst the doctrine of relation back applies, it does not legalise the maintenance of an action by an administrator if that action was commenced prior to the issue of Letters of Administration.

17. Before mentioning *Austin and Others v. Hart* [1983] 2 WLR 866, I should deal with *Gaffney v. Faughnan*, [2006] 1 ILR 482. In that case the deceased died intestate on 15th April, 2002, with Letters of Administration being granted to the defendant on the 16th November, 2004. On the 15th April, 2004, a Plenary Summons issued but the defendant refused to accept service until after the Grant had been taken out. In that Summons the plaintiff did not make it clear that he was suing the defendant in a representative capacity. After an appearance was entered and the Statement of Claim delivered, the defendant issued a motion seeking what was virtually identical relief to that which is sought in this application. Laffoy J. dealt with the general law and cited with approval *Ingall v. Moran* (1944) 1 KB 160. The learned judge also referred to *Creed v. Creed* [1913] 1 I.R. 48 where, on an application by the plaintiff to amend the summons and statement of claim to show that he was suing in a representative capacity, the court struck out the action on the basis that when issued the plaintiff had no title to sue. A consideration of that judgment does not contain any analysis of the reasons for the courts decision. In any event Laffoy J., at p. 485 then continued

> "The court has not been referred to any authority in which, as here, it was the defendant who was a party in a representative capacity. However, in my view, the same principle must apply. When a summons is issued the person named as defendant must be competent at that time to answer the alleged wrongdoing and meet the remedy sought. If he is not the action is not maintainable. If he subsequently obtains a grant of administration this will not cure the fundamental defect and render the action maintainable".

Accordingly it can be seen that the principles outlined in *Ingall* and the courts conclusion in *Creed v. Creed*, were applied by analogy and apparently for the first time, to a situation where the representative was not maintaining an action but was in fact named as a defendant in proceedings instituted by a third party.

18. The case of *Austin and Others v. Hart* [1983] 2 WLR 866 is heavily relied upon by the plaintiff in order to suggest that if the judgment of Lord Templeman had been brought to the attention of Laffoy J. she would have decided otherwise in *Gaffney v. Faughnan* and in any event for the reasons set out in that decision he strongly urged this court not to follow *Ingall v. Moran*. The facts of *Austin v. Hart* are not materially relevant and do not require repetition. The judgment of Lord Templeman is however of considerable importance for his general remarks on the rule outlined in *Ingall*: At p. 871 he said

> "In the cited cases the plaintiff did not have any right to sue in the capacity claimed. In the present case the appellants were entitled to sue in the capacities in which they claimed, provided, as happened, no executor or administrator intervened to bring an action within six months of the death of the deceased. In *Ingall v. Moran* (1944) K.B. 160, 169 … Luxmoore LJ could not help "feeling some regret". In *Hilton v. Sutton Stream Laundry* [1946] K.B. 65, 73 … Lord Greene MR was not "averse to discovering any proper distinction which would enable this unfortunate slip to be corrected". In *Finnegan v. Cementation Company Limited* [1953] Q.B. 688, 699, Singleton LJ lamented "that these technicalities are a blot on the administration of the law, and everyone except the successful party dislikes them". Accepting without approving, the decisions of the Court of Appeal which have been cited, their Lordship sees no reason to encourage any extension of their ambit."

I respectfully agree with these observations which offer no support to a flourishing of this rule. In fact the very opposite is the case, with the Privy Council in *Austin and Others v. Hart* feeling distinctly uneasy about this principle.

20. In a further attempt (that is as well as s. 13 of the Succession Act, 1965) to overcome the potential harmful consequences for the estate of a deceased person, which result from a deferral of an administrator's title until the date of grant, the courts have developed a rule known as the doctrine of "Relation Back". This doctrine means that for limited purposes, a grant of administration will

relate back to the date of death of the deceased person. See *Thorpe v. Smallwood* [1843] 5 M. and GR 760. The primary purpose of this rule is to protect the estate in the intervening period between death and the obtaining of a grant. B. Parke identified in *Foster v. Bates* [1843] 12 M. and W 266, at 233, what the justification for the rule was, namely that he the administrator, "may have recovery against the wrong doer who has ceased or converted the goods of an intestate after his death, in an action of trespass or trover". Furthermore such an administrator may also sue for breaches of covenant occurring in the intervening period. See *Long v. Burgess* [1950] 1 KB 115. This rule however is not all embracing and does not on its face include the circumstances presenting in *Ingall v. Moran* [1944] 1 K.B. 160. Therefore as previously stated, actions commenced prior to the obtaining of a grant will not benefit from this rule even though the plaintiff subsequently obtains Letters of Administration. To date the doctrine has been thus so limited.

21. It seems to me that any rule of law, such as that espoused in *Ingall v. Moran*, which has such a rejectionist label attached to it by the English Court of Appeal and the Privy Council, should only be followed and applied where either this court is bound to so do or alternatively where the underlying reasons of justification so demand. Although I would always consider decisions of the Court of Appeal and of the Privy Council to be both persuasive and authorative, I am of course not bound by either. In addition whilst evidently I cannot speak for what Laffoy J. would have done, if *Austin v. Hart* had been opened to her, nevertheless could I offer the view that as a matter of probability she would have been impressed with the opinion of Lord Templeman and would have at least paused before extending the rule, by applying it, apparently without precedent, to a situation where the representative person was not seeking to maintain an action, but rather was being named as a defendant in such an action. In these unusual circumstances I cannot be sure that *Gaffney v. Faughnan* represents the conclusive views of Laffoy J. on the point. Therefore I feel free to consider the matter myself.

22. There is no doubt but that, subject to the second issue raised on this application, the plaintiff has a *prima facie* case against the estate of the deceased person. Equally so there is no doubt but that as of the 9th May, 2006 he was entitled to seek to enforce that claim by instituting proceedings. Moreover he did not require the existence of a grant to confer the status of a plaintiff, as such, on him. What therefore did he do wrong? It would appear, following *Ingall v. Moran*, that the Writ was premature and therefore irregular. Even if it was, why I ask, should that necessarily result in it being a nullity, where the defendants have assured the plaintiffs of their confidence in obtaining Letters of Administration imminently, and thus putting beyond question their capacity to be sued. In addition why should such a drastic result follow when the defendants raised no objection to the plaintiff suing and when prior to the grant, they entered an unconditional appearance. Again I ask why such a result in the absence of any prejudice, let alone substantial prejudice, and when the defendants involvement could only be for the benefit of the estate. How is the estate demnified by the institution of proceedings on the 9th May, 2006, when in fact no point could have been taken on and after the 26th June, 2006? What damage has been caused to it? In my view none. In fact the opposite is the position. The collection and preservation of the estate for those entitled is of the first importance and if a law suit exists which potentially jeopardises this process, it must be of equal importance that the estate is properly represented. In fact the only risk of instituting proceedings prior to the grant rests with a plaintiff in that he can never execute any award unless the named defendant had by that date obtained Letters of Administration. Moreover if such a defendant, for whatever reason, ultimately fails or refuses to extract a grant, then subject to any individual circumstances, the plaintiff may be liable for the costs of the proceedings. Likewise if a person, unconnected with the estate is wrongfully named, he can immediately so indicate and the court would surely make the required consequential order, including costs, virtually for the asking. Consequently I cannot identify any particular reason, consistent with the existence of this rule, which persuades me that in the circumstances of this case it is a good rule.

23. It seems to me that Singleton LJ, in *Finnegan v. Cementation Company Limited* was perfectly correct in suggesting that this technicality was "a blot in the administration of the law" and that equally so Lord Templeman was correct in saying that there should be no extension of the rules' application. As of today's date therefore, I would have little time for re-echoing the rigidity of technicalities within the law as was commonly the position at the time of *Ingall v. Moran*. Instead I would much prefer an approach based on justice where there are no compelling reasons to uphold and continue a rule capable of inflicting the opposite, namely injustice. For my part therefore if it became necessary for the purposes of this decision I would not extend the application of the rule to the facts of this case. In addition, even if I am wrong in this regard, I see no reason why circumstances like the present would not comfortably fall within the reasons which underline the doctrine of "relation back". On either basis I would refuse the defendants application on this point.

24. Even if I should be incorrect in these conclusions there is another reason why I would refuse the defendants application. As appears earlier in this judgment Daniel Gormley and Co. Solicitors were fully alive to the twin difficulties arising by virtue of s. 9 of the Civil Liability Act, 1961 and the potential application of what I might call the rule in *Ingall v. Moran*. This is abundantly evident from their letter of the 5th May, 2006. That is why they sought confirmation, as they had previously done, that Matheson Ormsby and Prentice would accept service of the plaintiffs proceedings on behalf of the defendants and that no point would be taken on the two year period having run before the grant issued. In fact they went further and warned that in default of a response they would apply to have an administrator *ad litem* appointed. On 8th May Messrs Matheson Ormsby and Prentice replied with the contents of their letter being set out at para. 7 above. Therein they confirmed authority to accept service of the proceedings on behalf of the defendants and informed the plaintiffs solicitors of their confidence in obtaining a grant of administration in the near future. Whilst it is true to say that this letter did not specifically deal with the point about the statute of limitations and the date of the grant, nevertheless that letter, together with the subsequent unconditional appearance, (entered before obtaining the grant) the forwarding of the Letters of Administration to the plaintiff and the repeated calls for a Statement of Claim, all lead me firmly to the conclusion that the defendants, who had express notice of the point, had decided against raising it at any time prior to the delivery of the Statement of Claim. When or why in fact they decided to change their minds is unclear. Moreover and of crucial significance is the fact that in the absence of the letter of 8th May, Donal Gormley and Co. had sufficient time to apply for and obtain a grant of administration *ad litem* and thus could have put the present argument out of the defendants reach. In my opinion although very much aware of the pending difficulty, as it then was, they did not adopt such a course, because of their reliance, reasonably arrived at, on what they considered to be assurances from the defendants that they were safe in not so doing.

In my view therefore the letter of the 8th May, by reason of its contents and silence constituted a material representation by the defendants as duly authorised agents, which was intended to and in fact did influence the plaintiff to his detriment in refraining from applying for the appointment of an Administrator *ad litem*. See Halsbury 4th Ed Reissue Vol 16(2) 1052.

In such circumstances it would be entirely unconscionable to permit the defendants to now rely upon this point.

25. A not dissimilar situation was referred to by Henchy J. in *Doran v. Thompson* [1978] I.R. 223 where however on the facts of that case no such representation was found to have been made. At p. 225 of the judgment the learned judge said "Where in a claim for damages such as this a defendant has engaged in words or conduct from which it was reasonable to infer, and from which it was in fact inferred, that liability would be admitted, and on foot of that representation the plaintiff has refrained from instituting proceedings within the period prescribed by the statute, the defendant will be held estopped from escaping liability by pleading the statute. The reason is that it would be dishonest or unconscionable for the defendant, having misled the plaintiff into a feeling of

security on the issue of liability and thereby, into a justifiable belief that the statute would not be used to defeat his claim, to escape liability by pleading the statute. The representation necessary to support this kind of estoppel need not be clear and unambiguous in the sense of being susceptible of only one interpretation. It is sufficient if, despite possible ambiguity or lack of certainty, on its true construction it bears the meaning that was drawn from it. Nor is it necessary to give evidence of an express intention to deceive the plaintiff. An intention to that effect will be read into the representation if the defendant has so conducted himself that, in the opinion of the court, he ought not be heard to say that an admission of liability was not intended".

The principles outlined in that passage apply with equal force and directness to this case. Accordingly being satisfied that there is no question of the *ultra vires* doctrine applying, I would conclude that the defendants are estopped from raising what I have described as Issue No. 1 in this application.

26. The second and very much subsidiary point raised by the defendants was that the proceedings were bound to fail in that the pleaded facts disclosed no cause of action. They relied upon *Barry v. Buckley* [1981] I.R. 306 and *Jodifern Limited v. Fitzgerald* [2000] 3 I.R. 321 as disclosing the existence of the courts jurisdiction in this regard. Furthermore they have referred to the case of *M.F. and E.F. v. J.D.F*. [2005] 4 I.R. 155 as indicating what ingredients a plaintiff has to prove in order to establish a beneficial interest in property arising by way of proprietary or promissory estoppel.

27. There is no doubt but that the court has such a jurisdiction, with one of the earliest cases of real prominence in this regard being *Barry v. Buckley* [1981] I.R. 306. Since then there has been a multitude of cases in which this court and the Supreme Court have dealt with the ambit of the courts inherent jurisdiction when faced with an application to strike out an action *in limine*. Such jurisdiction "should be exercised sparingly and only in clear cases". So said McCarthy J. in *Sun Fat Chan v. Osseous Limited* [1992] 1 I.R. 425. In that case the learned judge also felt that a statement of claim should not be struck out if it admitted of an amendment which would save the action. At p. 428 of the report McCarthy J. said "Experience has shown that the trial of an action will identify a variety of circumstances perhaps not entirely contemplated at earlier stages in the proceedings: often times it may appear that the facts are clear and established but the trial itself will disclose a different picture": See also para. 12.002 of Delaney and McGrath, Civil Procedure in the Superior Courts, where the authors cite some but by no means all, of the cases which have dealt with this topic in the past 25 years.

28. The case of *Jodifern Limited v. Fitzgerald*, which was referred to by the defendants is also useful, and in particular the judgment of Murray J. where at p. 334 of the report the learned judge said "The object of such an order is not to protect a defendant from hardship in proceedings to which he or she may have a good defence but to prevent the injustice to a defendant which would result from an abuse of the process of the court by a plaintiff. Clearly, therefore, the hearing of an application by a defendant to the High Court to exercise its inherent jurisdiction to stay or dismiss an action cannot be of a form of summary disposal of the case either on issues of fact or substantial questions of law in substitute for the normal plenary proceedings. For this reason, a primary precondition to the exercise of this jurisdiction is that all of the essential facts upon which the plaintiffs claim is based must be unequivocally identified. It is only on the basis of such undisputed facts that the court may proceed. Moreover, and this is the aspect which I wish to emphasise, where all the essential facts have been so identified, it must also be manifest that on the basis of those facts, the plaintiffs case have no foundation in law …".

29. In applying these principles to the facts of this case I could not conceivably agree that the same is a fit or appropriate one to be dismissed at this juncture. In his affidavit grounding this application the second named defendant claims that there is no evidence of an expectation on behalf of the plaintiff of receiving this house or that the deceased encouraged such a belief on his part. Moreover it is suggested that the existence of a promise by the deceased is not evident and that the work done by the plaintiff on her behalf was of a voluntary nature and commenced before any conversation is alleged to have taken place. In addition the promise, such as it was, was not conditional upon the provision of services or the expenditure of money by the plaintiff on behalf of the deceased. For these and the other reasons contained within paras. 21 to 23 of the affidavit, it is claimed, as previously stated, that the proceedings are misguided and constitute an abuse of the court.

30. In my view this suggested conclusion is without substance and incorrect in law. As appears from the Statement of Claim the plaintiff alleges that the services which he carried out and the moneys which he expended, prior to any alleged representation, were largely made good to him by the deceased. After the first suggested representation was made in 1989 the plaintiff continued his commitment to the deceased but thereafter neither sought nor obtained recoupment. Moreover it is expressly pleaded that the reason why no gift was given to the plaintiff at Christmas 1989 was related to the deceased's intention of leaving him her house and therefore inferentially one can also assume that that was the reason why the plaintiff continued providing services and expending moneys for a considerable time thereafter. His claim is also consistent with the fact that the deceased allowed him to so do without offering any consideration therefor. In my view whilst the Statement of Claim could be more thorough the same nevertheless adequately contains all essential ingredients, and accordingly, in my opinion discloses a *prima facie* cause of action.

31. In any event as McCarthy J. had warned in *Sun Fat Chan v. Osseous* the pleadings in the instant case are in their infancy in that no particulars have either been sought or delivered, no defence has been filed and no discovery has been obtained. In these circumstances it would be in my view an entirely unwarranted interference with the plaintiffs constitutional right of access to the courts to dismiss his action on the basis suggested by the defendants.

32. On this second issue therefore I would also dismiss the application.