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THE COURT OF APPEAL

Court of Appeal Record Number: 2021/97

High Court Record Number: 2021/849P

Whelan J. Neutral Citation Number [2022] IECA 9

Noonan J.

Haughton J.

BETWEEN/

PHILIP WARD

PLAINTIFF/APPELLANT

-AND-

TOWER TRADE FINANCE (IRELAND) LIMITED

& AENGUS BURNS

DEFENDANTS/RESPONDENTS

JUDGMENT (*Ex Tempore*) of Mr. Justice Haughton delivered on the 13th day of January, 2022

1. I agree with the judgment just delivered by Judge Noonan, but would add the following.

2. The first requirement for a plaintiff seeking a prohibitory interlocutory injunction is that they show a fair or serious question to be tried. Absent a fair question to be tried, it is not necessary for the court to proceed to consider the balance of convenience or adequacy of damages.

3. The appellant in essence argues that two issues arise for trial:

(a) The first is based on clause 24 of the Trading Agreement in which the parties submitted to South African law and jurisdiction. This is unstateable firstly because clause 24 uses the phrase “non-exclusive jurisdiction”, thus not excluding jurisdiction before the Irish courts, and secondly because the agreement is in any event clearly superseded by the Settlement Agreement in which the appellant expressly submits to the exclusive jurisdiction of the Irish Courts. This was expressly agreed by Philip Ward in clause 7 of the Settlement Agreement entitled “ENTIRE AGREEMENT” which provides:

“This settlement agreement, to include the documents annexed hereto, constitutes the entire agreement between the Parties with respect to the within actions and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter”

This makes it clear that the Trading Agreement was extinguished by the Settlement. This was one of the clauses which the court is entitled to assume was explained by Ms. Skinnader to the appellant.

(b) The second issue argued is a claim based on misrepresentation in relation to the Trading Agreement and clause 24, and is also unstateable. There is no evidence of any misrepresentation whatsoever. Philip Ward signed the Trading Agreement on behalf of the company and must therefore be taken to have known and understood the contents of that agreement. There is no evidence that the Trading Agreement was not disclosed - it is accepted that it was an exhibit in an affidavit sworn in the Summary Summons proceedings. Moreover the Settlement Agreement was obviously reached at arms-length and independent legal advice was sought and received by the appellant before he entered into the Settlement.

4. These arguments, which were made and correctly rejected in the High Court, do not come near reaching the relatively low threshold test of a fair or serious question to be tried. They are, as Judge Noonan has said, “patently untenable and misconceived”.

5. I would go further, and describe them as spurious, being entirely unfounded in law and fact, and entirely without merit.

6. This appeal is frivolous and vexatious and in my view should not have been pursued. It is one that in my view responsible solicitors and counsel would have advised their client should not be pursued.

I would also dismiss this appeal.

*Whelan and Noonan JJ. concur with this judgment.*