

THE HIGH COURT

[2023] IEHC 267

[2018 9955 P]

BETWEEN

KATHLEEN MINNOCK

PLAINTIFF

AND

PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY

COMPANY,

DECLAN TAITE

AND

NIALL QUINN

DEFENDANTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 19th day of May 2023

1. This is my judgment on the application of the first and second defendants to strike out these proceedings on a number of grounds. These are: -

(i) Pursuant to O. 122, r. 11 of the Rules of the Superior Courts or alternatively, pursuant to the inherent jurisdiction of the court dismissing the proceedings against these defendants for delay and/or want of prosecution.

(ii) An order Pursuant to O. 19, r. 28 of the Rules, or alternatively, pursuant to the inherent jurisdiction of the court, dismissing the proceedings on the grounds that they are frivolous, vexatious and/or bound to fail.

These Defendants also seek:

(iii) An order pursuant to s. 123 of the Land and Conveyancing Act 2009 vacating the lis pendens registered by the plaintiff in these proceedings affecting the property known as 140 Morehampton Road, Donnybrook, Dublin 4.

2. The application is grounded upon an affidavit of Marianne Harney, a portfolio manager of the first defendant (“Pepper”). In her affidavit, Ms. Harney deposes to the following facts.

3. On the 10th of April 2014, an order of this Court was made requiring the third defendant, Mr. Quinn, to deliver up possession of the house at 140 Morehampton Road (“the Property”). That order was made in proceedings which commenced in 2009, and in which ACC Bank plc (“ACC”) sought recovery of two premises held pursuant to mortgages executed in its favour by Mr. Quinn. One of these premises was the Property at issue in the current proceedings. ACC’s action against Mr. Quinn was heard in the High Court on the 21st, 22nd, 23rd and 24th of January 2014, judgment was delivered by White J. on the 25th of March 2014, and the Order of the court was made (as already mentioned) on the 10th of April 2014. The judgment of White J. records that the plaintiff in the current proceedings, Ms. Minnock, had been notified of the earlier proceedings, that Ms. Minnock (originally represented in those proceedings by senior counsel) had sought liberty to bring an application to have herself joined as a party, but nonetheless she failed to make any such application.

This was despite the fact that the 2009 proceedings had been adjourned (in April 2011) at the

request of counsel for Ms. Minnock for the purpose of bringing an application to be joined as a party to the proceedings taken by ACC against Mr. Quinn. It is also clear from the judgment of White J. that Ms. Minnock had been fully aware of the claim on foot of the ACC mortgage since 2010. Ms. Harney also testifies (at para. 11 of the grounding affidavit) that: -

“I am informed by my solicitors and believe that [Ms. Minnock] was questioned closely on her financial affairs in those proceedings with a view to establishing whether she was in a position to take over payments under the provisions of the Family Home Protection Act 1976 and it was clear from her evidence that she was not, and it was also clear from her evidence that she had not contributed to the purchase price of the Property as her whole income had been committed to other properties”.

4. The reference to the Family Home legislation arises because Ms. Minnock was at all material times the spouse of Mr. Quinn.
5. The order of White J. was appealed by Mr. Quinn, but the appeal was not prosecuted and ultimately was dismissed by the Court of Appeal by order of the 1st of June 2018. Mr. Quinn then sought leave to appeal that order to the Supreme Court but, on the 9th of April 2019, leave was refused.
6. After the appeal to the Court of Appeal was struck out, but before the Supreme Court refused leave to appeal to it, the current proceedings were commenced by Plenary Summons dated the 15th of November 2018. The reliefs claimed in the Plenary Summons are extensive, but can be summarised as constituting a claim to beneficial ownership of the Property, a

claim that all relevant charges in respect of the Property are invalid, a claim for orders restraining the first and second defendants from taking any steps whatsoever to realise the securities which they assert exist in respect of the property, and a claim for punitive, aggravated, exemplary and compensatory damages.

7. While the claim was initially against ACC (as the first defendant) Pepper was substituted for ACC by order dated the 6th of December 2021.

8. After the current proceedings were issued, Ms. Minnock registered a lis pendens in respect of the property. As of the date of Ms. Harney's grounding affidavit (the 30th of January 2023) the Plenary Summons had never been served by Ms. Minnock on the first or second defendant, nor had formal notice of the lis pendens been served on either of these defendants. As it happens, the solicitors acting for the first and second defendants "became aware of the registration of a lis pendens in or around January 2019" and entered an appearance in order to take up a copy of the summons. That is how the Plenary Summons was before the court at the hearing of the motion.

9. Over a lengthy period of time, the solicitors for these defendants agreed that Ms. Minnock would have further time to deliver a Statement of Claim. On the 1st of April 2019, Byrne Wallace (as solicitors for the first and second defendants) sought delivery of a Statement of Claim within 21 days of that date and consented to the Statement of claim be delivered within that time. After the substitution of Pepper for ACC, the same solicitors acted for the first and second defendant and (on the 17th January 2022) again sought a Statement of Claim, this time within eight weeks of the date of receipt of that correspondence. On the 13th of July 2022 Byrne Wallace indicated that "one final period of seven days" would be

provided for the delivery of the Statement of Claim. This was in correspondence with solicitors who had been acting for Ms. Minnock (and Mr. Quinn) in settlement negotiations which took place between the 25th of February and the 4th of July 2022. These discussions were ultimately fruitless. At their conclusion, as I have already recorded, a further period was afforded for the delivery of the Statement of Claim but this did not happen.

10. In the correspondence, Byrne Wallace were careful to indicate that if the Statement of Claim was not delivered an application to strike out the case against the first and second defendants may be brought. The last item of correspondence (again offering a “final period” of seven days for the delivery of the Statement of Claim) was sent on the 26th of July 2022, again to the solicitors who had been acting for Ms. Minnock in negotiations but who never entered an appearance for her in these proceedings.

11. Despite first being sought in correspondence in 2019, no Statement of Claim was delivered in the current proceedings. This is, by any standards, an extraordinary delay on the part of Ms. Minnock in prosecuting a claim initiated in November 2018. Neither Pepper nor the second defendant (“Mr. Taite”) is in my view responsible for any delay in respect of the progression of the claim. The initial failure on the part of Ms. Minnock in even serving the Plenary Summons (which was continued since the proceedings were commenced) and her subsequent failure to deliver a Statement of Claim, means that there has been no opportunity for either Pepper or Mr. Taite to bring the proceedings on. They ultimately had no option but to bring the current motion and did so (a) having afforded an opportunity for settlement of the proceedings and (b) having given Ms. Minnock plenty of warning that such a motion would be brought.

12. Ultimately, Ms. Minnock did not even appear at the hearing of the motion on the 8th of January 2023.

13. In terms of prejudice as a result of the failure to prosecute the proceedings, Ms. Harney refers to two specific items. Firstly, at para. 16 of her affidavit, Ms. Harney states: -

“The institution of further proceedings, without the delivery of a Statement of Claim to permit an assessment of the veracity or differentiation of the plaintiff’s claims, is prejudicial to the first and second defendant”.

14. Secondly, at para. 17 of her affidavit, Ms. Harney states that the registration of the lis pendens “serves to frustrate [Pepper’s] legitimate right of sale of the property”. Ms. Harney goes on to note that the debts of Mr. Quinn, secured on the Property, as of the 16th of January 2023 were €2,627,247.10. Both Ms. Minnock and Mr. Quinn continue to reside in the Property without either discharging or reducing this debt.

15. It could be the case that the removal of the lis pendens in itself would reduce the prejudice caused to the first and second defendants as a result of these proceedings remaining extant. However, on one view the lis pendens is no more than a warning to a potential purchaser of property that there are proceedings concerning the ownership of the property. If the lis pendens is removed that does not in itself extinguish the possibility (if not likelihood) that any potential purchaser will raise queries as to whether or not the ownership of the property is subject to litigation. Any such query, when answered honestly, could well

undermine any potential sale or reduce the price which the potential purchaser is willing to pay for the Property.

16. In considering dismissing the proceedings because of the delay since they were commenced, I have had regard to the judgment of Collins J. in *Cave Projects Limited v. Gilhooley* [2022] IECA 245. Para. 36 of that judgment, while stating that it does not purport to be a comprehensive survey of the case law, sets out “a number of points arising from the jurisprudence” which are of general application. I have considered each of these carefully. I have come to the conclusion that in these proceedings: -

(a) Ms. Minnock is guilty of inordinate delay in the prosecution of the claim. A failure to deliver a Statement of Claim over four years after a very full Plenary Summons was issued is completely unsatisfactory.

(b) The delay is inexcusable. No excuse, or reason for the delay, has been proffered either in correspondence or in affidavit. It is difficult to see how any legitimate excuse could exist in the circumstances of the current case.

(c) Notwithstanding the extreme seriousness of the termination of Ms. Minnock’s claim at this point in time, I am satisfied that the balance of justice weighs in favour of dismissing the claim. The continued existence of the proceedings is, for the reasons I have identified, plainly prejudicial to the first and second defendants. That is so even if the *lis pendens* is removed. Indeed, while it is not necessary for the purpose of my decision to do so, it is possible to extrapolate from the facts of this case that the issuing of these proceedings in the first case was designed to cause this very type of prejudice to ACC (later Pepper) and Mr. Taite. Very significant borrowings have been and remain secured on the property. The 2009 litigation involving Mr. Quinn was one

which Ms. Minnock was free to join, but ultimately (with the advantage of the advice from a full legal team) she chose not to participate. Shortly after the Court of Appeal had dismissed Mr. Quinn’s appeal against the judgment of this Court, the current proceedings were initiated (and the *lis pendens* registered) but no further steps taken to advance them. These facts are consistent with the proceedings being brought for the purpose of frustrating any effort by the lender and the receiver to realise the security in the property. Indeed, it is difficult to think of any other reason why these proceedings were initiated in the first place. As I have said, the prejudice to Pepper and Mr. Taite (identified earlier in this judgment) is sufficient to establish that the balance of justice lies in favour of dismissing proceedings at this time. Were it necessary to do so, I would also find that the motivation in bringing the proceedings is of a type that makes it – to employ the words of Barniville J. in *Gibbons v. N6 (Construction) Limited* [2022] IECA 112 – “proportionate and just” that Ms. Minnock be denied “access to a trial of [her] claim. . .”.

17. Having decided that these proceedings should be dismissed because of the plaintiff’s delay in their prosecution, I do not propose to decide the other grounds upon which it is said that the claim should be dismissed. On the third limb of the motion, however, and for the reasons set out in the earlier part of this judgment, I have decided that, were the proceedings to have been allowed to be prosecuted, the *lis pendens* registered in respect of the property would nonetheless be vacated. In doing so, I would follow the judgment of Barniville J. in *Hurley Property ICAV v. Charleen Limited* [2018] IEHC 611 that a *lis pendens* can be removed if the person registering it does not prosecute the proceedings expeditiously; s. 123 (b) (ii) of the Land and Conveyancing (Law Reform) Act 2009. Here, it is inadequate to say that Ms. Minnock has failed to prosecute the claim expeditiously; she has not prosecuted it at

all. In those circumstances, and for the reason of this delay alone, even if the proceedings were to remain alive the lis pendens would be removed.

18. I will therefore make an order dismissing the proceedings as against the first and second defendants by reason of the delay on the part of the plaintiff.

19. For the avoidance of doubt, I further make an order vacating lis pendens registered by the plaintiff in these proceedings and affecting 140 Morehampton Road, Donnybrook in the city of Dublin.

20. My initial view is that the first and second defendants are entitled to their costs of the proceedings as against the plaintiff. This is, however, a provisional view. I will list the matter for mention at 10:15 am on the 21st day of June 2023 to deal with the questions of costs and any other outstanding matters.