



**THE COURT OF APPEAL  
CIVIL**

**Neutral Citation Number [2020] IECA 194**

**Record No. 2019/12**

**Baker J.  
Haughton J.  
Murray J.**

**BETWEEN:**

**DECLAN AND MARIE GEARY**

**PLAINTIFFS/APPELLANTS**

**- AND -**

**PROPERTY REGISTRATION AUTHORITY, ENNIS PROPERTY FINANCE DESIGNATED  
ACTIVITY COMPANY, BANK OF SCOTLAND PLC, TOM KAVANAGH AND MAPLES &  
CALDER, SOLICITORS**

**DEFENDANTS/RESPONDENTS**

**JUDGMENT of Mr. Justice Murray delivered on the 21st day of July 2020**

1. The essential effect of the substantive judgment I delivered in this matter on 8 May 2020 ([2020] IECA 132), was three-fold:
  - (i) the appellants' succeeded in their claim that their proceedings as against the first, second and fourth named respondents should not have been dismissed;
  - (ii) the appellants failed in their claim that the proceedings against the third and fifth named respondents should not have been dismissed;
  - (iii) the appellants appeal against the refusal by the High Court of their application for interlocutory injunctive relief was refused.
2. It follows from conclusion 1(i) that the appellants are entitled to recover their reasonable outlays and expenses incurred in connection with the application of the second and fourth named respondents to dismiss the proceedings against them. Therefore, I would order that the appellants recover those outlays and expenses in both the High Court and in this Court. In default of agreement, these should be adjudicated upon in accordance with the provisions of the Legal Services Regulation Act 2015.

3. The position of the first named respondent is different. It did not apply to dismiss the proceedings against it in the High Court, and therefore no order should be made against it in respect of the appellants' outlay and expenses in that Court. In this Court, while the first named respondent did not make submissions in respect of the dismissal of the proceedings against it, neither did it accept that the order should not have been made. The appellants had to appeal to reverse that order, and in my view their outlays and expenses in this Court should be ordered in their favour and against the first named respondent.
4. It follows from conclusion 1(ii) that the third and fifth named respondents are entitled as against the appellants to their costs of the proceedings before the High Court and this Court, and I would make an order to that effect.
5. Having regard to conclusion 1(iii), the respondents against whom the interlocutory relief was sought are entitled to recover the costs of that application in the High Court and in the Court of Appeal. That relief having been sought only as against the first and fourth named respondents, only those parties should recover these costs.
6. The High Court Judge – having dismissed the proceedings against all respondents - ordered that the costs recovered by the respondents be stayed pending the outcome of the separate proceedings brought by the Receiver (*The High Court Record No. 2017/6534P Between Tom Kavanagh, Plaintiff, and Declan Geary and Marie Geary, Defendants*). Such a stay should be imposed in respect of the costs ordered in favour of the appellants and the costs ordered in favour of the first, second and fourth named respondents. As neither the third nor fifth named respondents appealed the grant of that stay, it should remain in place in respect of the costs ordered in their favour in the High Court. However, no such stay should be put on the orders for costs made in favour of the third or fifth named respondents in respect of this appeal as these parties are not involved in any way in the Receiver's proceedings.
7. The judgment I delivered on 8 May directed that within eight weeks of the date of the judgment, the appellants should deliver a Statement of Claim as against the first, second and fourth named respondents and that if the Statement of Claim was not delivered within that period the proceedings shall stand dismissed as against those parties. In their submissions the second and fourth named respondents contend that they are entitled to their costs *inter alia* because the appellants did not deliver a statement of claim within this timeframe.
8. The appellants have responded to this as follows:

*'In principle, the Plaintiffs/Appellants had no issue providing a Statement of Claim as required however, in the light of the back and forth issues regarding the perfected Order, this matter was put back. The Plaintiffs/Appellants respectfully propose in light of same, the Court (at least) may set a new date for delivery of a Statement of Claim should they take the view it is appropriate to provide the*

*Statement at all in the light of an application for Appeal to the Supreme Court to have that matter interrogated and overturned ...*

*... the clock does not start ticking until the Order is perfected, provided, issued and enforceable.'*

9. The Appellants make two further and related points. First, they request a stay on the Order requiring delivery of a Statement of Claim pending an appeal to the Supreme Court noting that as matters presenting stand they are prohibited from making certain points in the pleading and noting that that Order might be reversed on appeal. Second, they say that it is a '*defilement of Constitutional Rights to strike out the proceedings on an Order not decided or perfected*'. They make these comments noting that they are in the Courts' hands in relation to the matter.
10. In the very particular circumstances that present themselves here, I am inclined to accede to the application by the appellants that they be afforded a further period within which to deliver their Statement of Claim. I adopt this position having regard to:-
  - (a) the evident misapprehension of the appellants that an order had to be perfected to this end (while noting that the appellants were advised of the correct position by the solicitors for the second and fourth named respondents),
  - (b) the fact that the appellants are representing themselves in the matter,
  - (c) the disruption arising from the COVID pandemic,
  - (d) the fact that although the parties were to seek to agree an Order within fourteen days of the date of the judgment they did not do so (and so advised the Court on 22 May), that they were unable to do so by 24 June, that it was only after that that submissions could be directed and that there was a consequent delay in the matter coming back to the Court for consideration (by which time, I note and underline, the eight weeks had elapsed).
11. On this basis, and subject to the following paragraph, I am inclined to extend the time for delivery of the Statement of Claim until 5pm on Tuesday 8 September, with the plaintiffs outstanding claims in the action to stand dismissed if a Statement of Claim is not delivered by that date. In the event that the proceedings are so dismissed, the respondents will be entitled to the costs of the proceedings. This period will not be extended further.
12. The respondents are free to indicate their objection to this with reasons within seven days of the date of this judgment. If no such objection is received by then an order to that effect will be drawn. If they do object, the matter will be ruled upon.
13. In respect of the points made by the appellants, I would observe as follows:

- (i) Their belief that an order had to be perfected before time ran is mistaken. The judgment was clear in its term;
- (ii) The application for a stay on this order is refused. The Statement of Claim should be delivered now so that the defendants can plead in response and make any applications they determine appropriate. If the Supreme Court grants leave to the appellants to appeal and they succeed in any relevant aspect of their appeal, they can apply to amend their proceedings.

14. The Order will therefore be as follows:

- (i) The appellants will recover their reasonable outlays and expenses incurred in the High Court and in this Court in connection with the application of the second and fourth named respondents to dismiss the proceedings against them, same to be adjudicated upon in accordance with the provisions of the Legal Services Regulation Act 2015. There will be a stay on this order pending the outcome of the Receiver's proceedings;
- (ii) the appellants will recover their reasonable outlays and expenses incurred in this Court in connection with their appeal against the Order of the High Court dismissing their proceedings against the first named respondent, to be adjudicated upon on the same terms. There will be a stay on this order pending the outcome of the Receiver's proceedings;
- (iii) the third and fifth named respondents will recover as against the appellants their costs of these proceedings before the High Court and this Court same to be adjudicated upon in default of agreement. There will be stay upon the costs of the High Court proceedings pending the outcome of the Receiver's proceedings, but no stay on the costs of the appeal.
- (iv) the first and fourth named respondents will recover the costs of the appellants' application for an interlocutory injunction in the High Court and in the Court of Appeal. There will be a stay on this order pending the outcome of the Receiver's proceedings;
- (v) unless within seven days of the date of this judgment the first, second or fourth named respondents provide a reasoned objection, the time for delivery by the appellants of statement of claim in accordance with the directions of this Court of 8 May will be extended to 5 pm on Tuesday 8 September; and
- (vi) in the event that the appellants fail to deliver a statement of claim by 5 pm on Tuesday 8 September these proceedings shall stand dismissed with costs in favour of the first, second and third named respondents.

15. The Order of the High Court as to costs will be varied accordingly.

16. Baker J. and Haughton J. are in agreement with the orders I propose and my reasons for so proposing.