

THE HIGH COURT

Rep?

Record No. 1669/1986

DUBLIN CIRCUIT

COUNTY OF THE CITY OF DUBLIN

BETWEEN

MINISTER FOR EDUCATION

PLAINTIFF/APPELLANT

AND

NORTH STAR LIMITED

DEFENDANT/RESPONDENT

Judgment of Mr. Justice Lynch delivered the 12<sup>th</sup> day of January 1987.

This is an appeal brought by the Plaintiff the Minister for Education against the dismissal by the Dublin Circuit Court on the 10th of June 1986 of a claim for specific performance of a contract dated the 15th June 1983.

The contract in question was for the sale of approximately half an acre of land in Rathcoole, County Dublin, by the Defendant North Star Limited to the Plaintiff. The object of the purchase by the Plaintiff was to assist in giving access to a plot previously purchased by the Plaintiff from the Defendant for the purpose of erecting a school thereon.

I find the facts to be as follows.

The Board of Managment of a school known as Scoil Chronain

wished to erect a new Irish medium primary school and a new English medium secondary school in Rathcoole County Dublin in or about the year 1977. For that purpose they entered into negotiations with the Defendant with a view to purchasing two fields totalling about 15 acres in area. One of these fields adjoins Stoney Lane, Rathcoole, County Dublin, and the other field lies inside the former field to the east thereof. These two fields appear clearly on the map annexed to the contract dated the 15th of June 1983.

Subsequently the project of building a new English medium secondary school was abandoned and the Board of Management then sought to buy only the smaller field inside the field adjoining Stoney Lane for a new Irish medium primary school. In order to give access to this smaller field a small portion of the larger field was added at the north west end of the small field in substitution for a triangular portion at the south end of the small field. This substitution brought the western end of the small field or plot to be purchased to the mouth of Coolamber Drive by which it was hoped to gain access to the plot.

No copy of the transfer of this school plot was put in evidence but the oral evidence before me established that the school plot was transferred to the Plaintiff and not to the Board of Management of Scoil Chronain. Nevertheless a planning application was made by the Board of Management to Dublin County Council to erect a school on the plot and this application was refused on the 7th of March 1980 on the grounds that:-

"The proposed development, which envisages main vehicular access through the adjoining housing estate

which has twenty foot wide carriageways, would endanger public safety by reason of traffic hazard."

An appeal was brought by the Board of Management to An Bord Pleanala who upheld the decision of Dublin County Council on the 28th of January 1981 on the grounds that:

"The proposed means of vehicular access to the site from the adjoining housing estate is considered to be unsuitable to serve the proposed school and the additional traffic movements on the narrow estate roads which the proposed development would generate would endanger public safety by reason of traffic hazard."

This decision of An Bord Pleanala left the Plaintiff with a plot of land which was land-locked in that the only possible access to and from the plot as it stood would be by Coolamber Drive and planning permission for such an access had been refused. It was therefore necessary for the Plaintiff to obtain other means of access to the plot if any use was to be made of it. The negotiations in that behalf were however undertaken by members of the Board of Management and in particular the chairman Mr. Donal O'Riagain with the Defendants governing director Mr. Nicholas Stassen. Mr. Stassen is a Dutch national and was a Flemish language enthusiast in his own country and was very supportive of the idea of an Irish medium primary school being erected on the plot of land which the Defendants had sold to the Plaintiff. He therefore offered a right-of-way over a strip of his larger retained field adjoining Stoney Lane from the north western end of the school plot running westward past the end of Coolamber Road and as far as Stoney Lane. This strip of land is shown coloured green on the map annexed to the contract dated the 15th June 1983.

This offer of a right-of-way over this strip of land was made on the clear understanding that such right-of-way would only provide one of three vehicular entrances the other two to be via Coolamber Drive and Coolamber Road. Mr. Stassen was given to understand and in fact believed that planning permission would be available for an entrance via Coolamber Drive if entrances via Coolamber Road and Stoney Lane were also available and that Stoney Lane would therefore carry approximately only one third of the traffic to be generated by the school.

Mr. Stassen was then given to understand and in fact believed that the Plaintiff could not obtain planning permission for entrances to Coolamber Road if the Plaintiff had a mere right-of-way along the strip of land and that it would be necessary for the Plaintiff to own the strip of land to enable such planning permission to be obtained. The Defendant through Mr. Stassen agreed to such sale to assist in the development of the school plot as an Irish medium primary school but on the clear understanding and belief that the entrance via Stoney Lane would be merely one of three vehicular entrances and not the only such entrance. The Defendant reserved various rights-of-way and other rights over the plot agreed to be sold in order to enable the Defendant's retained lands to be developed in the future subject of course to planning permission in that behalf.

The contract for sale in this case is between the Defendant as vendor and the Plaintiff as purchaser. Yet nobody from the Department of Education ever met with Mr. Stassen or anybody from the Defendant. The nearest the parties came to such a meeting was the attendance of Mr. Sugars the architect for the proposed school development at a meeting between Mr. O'Riagain chairman of the Board of

Management and Mr. Stassen governing director of the Defendants. However, as I understand the evidence Mr. Sugars was originally employed by the Board of Management and was then retained by the Plaintiff when the conveyance of the school plot was made to the Plaintiff instead of to the Board of Management. The result has been a written contract which on the face of it and of the correspondence between the Solicitors for the Plaintiff and the Defendant appears to be detailed and clearly agreed but which in fact fails to express one of the fundamental bases of the agreement so far as the Defendant is concerned. This fundamental basis was that the entrance to the school from Stoney Lane would be only one of three vehicular entrances and that accordingly Stoney Lane which provides access for the Defendant's retained lands and indeed for the strip of land in sale itself would not be burdened with the whole of the traffic to and from the school but only with approximately with one third of it, thus reducing the traffic interference with the Defendant's retained lands and allowing a margin for traffic to be generated from the Defendant's retained lands in case that they should be developed in the future.

The Defendant's understanding and belief to the foregoing effect was so fundamental that if the contract was to express the Defendant's true agreement it should have contained a term making the contract conditional on the fulfilment of such understanding and belief by the obtaining of planning permission for vehicular access via Coolamber Drive and Coolamber Road as well as Stoney Lane. The negotiations between the parties were however hampered by the absence of direct discussions between officers of the Department of Education and Mr. Stassen

the governing director of the Defendant. Instead the negotiations were carried on between six parties, namely, the Defendant and its Solicitors, the Board of Management and their Solicitors and the Plaintiff and the Chief State Solicitor's Office. The result of this excess of negotiators without any meeting between the actual parties involved was to confuse matters rather than clarify them. In the course of closing submissions by Counsel I stated and I now repeat that all of the witnesses who gave evidence before me were absolutely frank and truthful but this case is an example of the old adage that too many cooks spoil the broth.

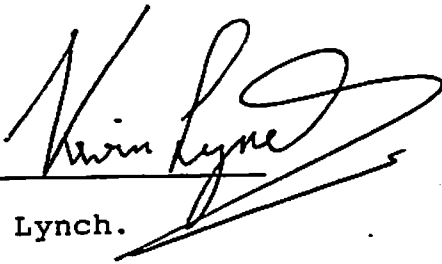
I accept the evidence of Mr. Stassen that the Plaintiff no longer intends to seek planning permission for a vehicular entrance via Coolamber Drive and Coolamber Road because of opposition to such entrances by local residents. It is a fundamental principle of equity that he who seeks equity must do equity and the Plaintiff is disqualified from the equitable remedy of specific performance by the Plaintiff's abandonment of any intention to seek vehicular access via Coolamber Drive and Coolamber Road.

On the other hand the Plaintiff says through his legal representatives that he was never aware of the Defendant's understanding and belief that there would have to be vehicular access via Coolamber Drive and Coolamber Road and that the Plaintiff would never have accepted the inclusion of a term to give effect to this understanding and belief in the contract. In those circumstances the Plaintiff and the Defendant were never *ad idem* despite the apparent written contract and for that reason there was really never any concluded contract between them and there can therefore be no specific performance.

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In the result I have come to the same conclusion as the Learned Circuit Court Judge and I accordingly affirm his Order in every respect.

Signed

  
Kevin Lynch.

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For the Plaintiff:

George Brady S.C. and William  
O'Brien B.L. instructed by the Chief  
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For the Defendant:

John Finlay S.C. and Ciaran J.  
O'Loughlin B.L. instructed by  
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Authorities Cited:

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Development) Act 1963 and in  
particular Section 84 thereof.  
Holland .v. Dublin County Council  
113 ILTR page 1.  
Marshall .v. Blackpool Corporation  
(1935) Appeal Cases 16.  
Anson on Contract (26th Edition 1984)  
pages 211 to 213.