

Neutral Citation: [2016] NIQB 106

Ref: GIR9928

Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 02/03/2016

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between

FOLD HOUSING ASSOCIATION

and

BALMORAL GOLF CLUB LTD

GIRVAN LJ

Introduction

[1] This matter comes back before the court on an application for an interlocutory injunction, the plaintiff being the Fold Housing Association. The matter was before Mr Justice Deeny some very considerable time ago and an interlocutory injunction was not granted on that occasion. It may be that in retrospect the order that was made at that time might have been a little clearer as to where it left the proceedings but what is clear is that when a plaintiff starts an action the obligation is on the plaintiff to prosecute the claim expeditiously and properly in accordance with the Rules of Court. Of course, extensions of time will happen in relation to various steps as the action proceeds, those extensions either being by agreement or by leave of the court, but at the end of the day the proceedings have to get on. A plaintiff is entitled to make an application to the court for an interlocutory injunction to protect the situation pending trial provided that the plaintiff can establish the appropriate principles established in American Cyanamid and the other authorities: arguable case; balance of convenience; inadequacy of damages; and so forth.

[2] An interlocutory injunction is only a stop gap injunction to protect the situation pending the trial of the action and an interlocutory injunction is always subject to and dependent on the action getting on to a trial or resolution between the

parties. What has happened in this case is unusual because not having succeeded in the interlocutory application in front of Mr Justice Deeny and the matter having been left adjourned or in the air, the matter drifted on. The plaintiff did not progress the action or deliver a Statement of Claim or proceed to get to the point of setting the matter down for trial on the triable issues. The question arises as to whether it is open to a plaintiff a year and a half or so after one interlocutory application which was unsuccessful to come back and argue well there has been a change of circumstances which justifies renewal of the application. I accept the proposition that a change of circumstances could justify a fresh interlocutory injunction application in an appropriate case. I am not entirely convinced that there has been anything like a significant change of circumstances in this case such as would bring that principle into play particularly bearing in mind that the plaintiff's expert was saying as long ago as October 2014 that there were problems in relation to the layout of the tee and the fairway which supported the plaintiff's claim. The case as it existed before Mr Justice Deeny has not really changed in a significant way from the case as it currently stands albeit that in the meantime, for a period of time, a winter tee has been in operation at the golf club which has avoided any problem apparently during the winter months.

[3] I am not convinced that this is a significant change of circumstances which would merit a re-opening of an interlocutory injunction application. On top of that, I consider that, in accordance with the principal, equity assists the vigilant and not the sleeping. There is a lack of vigilance on the part of the plaintiff in progressing the action in the normal way which makes the present application, while not an abuse of court, a wholly unsatisfactory procedure when the plaintiff had perfectly adequate and appropriate remedies to progress with the matter to the point of getting a final resolution of it.

[4] I have come to the conclusion that in the circumstances the application today should not be acceded to and that, that being so, if the plaintiff wishes to bring the matter to finality and to trial will have to get on with the action or if it does not will face the consequence that an application for dismissal for want of prosecution may arise, but the plaintiff must just take the matter through to a trial in the ordinary way. The question has been raised as to whether the court should fix an expedited trial in relation to the case. A possible date on 15 April is available, that is a one day slot and this is a case which may in fact take more time if the experts are not ad idem and it may not be an entirely satisfactory date but what I propose to do is simply to dismiss the application for the interlocutory injunction today. I will direct the plaintiff to get on with the action, the Statement of Claim is long overdue and the plaintiff should deliver the Statement of Claim within 10 days and that can be pleaded to in the ordinary way and Notice of Particulars served, if appropriate and in order to keep the matter under review so that finality is reached I am going to direct that the matter be listed before the Chancery Judge on Wednesday 6 April. I think what we will do in the meantime is we will pencil in Friday 15 [April] without fixing it as a date but pencilling it in so that date is kept free and if the judge is persuaded on 6 April that the case is meritorious for an expedited hearing on that

date he can firm up on that date but if he considers that it is not sufficiently urgent to require the hearing on that date he can so order.

[5] None of that is to prevent in the meantime the parties seeking to look at this matter in a sensible way to see if they can reach a modus vivendi. There are arguments on both sides of the case, clearly the neighbouring properties should be protected against escaping golf balls. The golf club does recognise it has a moral obligation, if not a legal obligation, to minimise the risk to householders. It is making efforts to redesign the fairway and it may be that by sensible discussion between the parties' experts an agreed way forward can be worked out that allows the matter to come to finality. I do not know whether the parties have considered a mediation approach in relation to the problem but that is something the parties can turn their mind to between now and the review on 6 April.

[6] I will reserve the costs to the trial judge.