

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

**DERMOT DOYLE
-and-
ELIZABETH DOYLE**

Plaintiffs:

-and-

**DESMOND DOYLE
-and-
MARY O'TOOLE
-and-
ANNE McRANDAL
Practising as O'TOOLE & McRANDAL SOLICITORS**

Defendants:

McCLOSKEY J

I INTRODUCTION

[1] This action, which is constituted by a claim for specific performance and a counterclaim for liquidated damages, features:

- (i) Dermot Doyle and Elizabeth Doyle, the Plaintiffs.
- (ii) Desmond Doyle, nephew of the first-named Plaintiff.
- (iii) Messrs. O'Toole & McRandal, a firm of solicitors, who, though represented by counsel (Mr. McNamee), did not, properly, seek to participate actively.

- (iv) Number 51 Drumaroad Hill, Castlewellan (which I shall describe as “*the Castlewellan dwelling house*”) which was formerly owned by the Plaintiffs, has at all material times been occupied by them and is currently owned by the first-named Defendant.

[2] The hearing which I conducted (on 15th and 18th June 2012) was confined to the Plaintiffs’ action for specific performance against the first-named Defendant and the counterclaim of the latter for liquidated damages. There is a broader litigation landscape, involving several courts, of which this hearing formed only one part. At the hearing:

- (a) The Plaintiffs were represented by Miss Moran of counsel.
- (b) The first-named Defendant represented himself.
- (c) The second and third-named Defendants’ solicitor and counsel were in attendance, under the guise of a watching brief.
- (d) Counsel representing the first-named Defendant’s former spouse, Lorraine Doyle, in the matrimonial and ancillary relief proceedings was similarly in attendance.

The Litigation

[3] I highlight the following features of the litigation jigsaw:

- (i) The first-named Defendant has represented himself throughout most of these proceedings.
- (ii) The Writ of Summons was issued on 12th November 2010.
- (iii) On the same date, Deeny J made a Mareva Order whereby the first-named Defendant was restrained from dealing in any way with a property at 335 Ravenhill Road, Belfast. This order remains in force.
- (iv) On 10th July 2008, a similar Mareva Order had been made in the Family Division. Its terms were broader, restraining dealings with 335 Ravenhill Road, 14 Raby Street and 54 Raby Street, Belfast.
- (v) Lorraine Doyle, consequential upon her divorce from the first-named Defendant, has secured a final ancillary relief order against him requiring a lump sum payment of £120,000, none of which has been discharged. This order was made on 17th May 2011. While it does not contain a specific money figure, the court was informed of an application to Weir J, on 18th June 2012, seeking to rectify this. There is

no dispute that a lump sum award of £120,000 was ordered by the court.

- (vi) Arising out of outstanding mortgage repayments of around £119,000 in respect of the Castlewellan dwelling house, the mortgagee has brought repossession proceedings against the first-named Defendant, which currently stand adjourned by the Chancery Master to 29th June 2012.
- (vii) In the present action, the Plaintiffs are also suing the second and third-named Defendants for damages for alleged professional negligence: this judgment does not determine this aspect of their claim in any way.

[4] It is evident that, whatever the outcome of the Plaintiffs' claim against the first-named Defendant, the broader litigation jigsaw will require further court adjudications and could, potentially, be complicated by issues such as competing priorities in respect of assets.

The Specific Performance Claim

[5] Following a commendably clear and concise opening address by Miss Moran of counsel, I sought to clarify the first-named Defendant's position. This exercise was undertaken with appropriate degrees of care and repetition, given his status of unrepresented litigant. This elicited an unequivocal acknowledgement by the first-named Defendant, which he repeated more than once, that he is no longer disputing the Plaintiffs' claim for specific performance. This is formulated in the prayer in the Statement of Claim in these terms:

"The Plaintiffs therefore claim ...

1. *Specific performance of a contract made between the Plaintiffs of the one part and the first-named Defendant of the other part, whereby in consideration of a transfer of property situate at and known as 51 Drumaroad Hill, Castlewellan by the Plaintiffs to the first-named Defendant in order to provide the [first-named] Defendant with sufficient security to raise capital, the first-named Defendant would transfer the said lands and premises back to the Plaintiffs free from all encumbrances... disposing of the first-named Defendant's entire legal and beneficial interest in the said lands and premises".*

An amendment of the Statement of Claim, substituting the words "*legal and beneficial interest*" for "*beneficial interest*" was permitted by the court.

[6] Specifically, the first-named Defendant made the following representations to the court:

- (a) He conceded that he is obliged to transfer the entirety of his interest in the Castlewellan dwelling house to the Plaintiffs free of all encumbrances.
- (b) He would be pursuing a counterclaim for £10,073.06 against the Plaintiffs (*infra*).
- (c) He is not claiming interest on his counterclaim.
- (d) He “needs” about £15,000 to settle his personal debts, which include mortgage and rates arrears in respect of his current place of residence at 14 Raby Street, Belfast.
- (e) He wishes to refute any aspersions adverse to his character and reputation which have been made during these proceedings.

[7] Following an exercise the chief characteristic whereof was careful and repeated probing by the court, I was satisfied that the first-named Defendant’s concession, recorded above, was unambiguous and made freely, with full knowledge and understanding. This will be reflected in the final order of the court. As a result, the hearing to be conducted by the court was to be confined to the first-named Defendant’s counterclaim against the Plaintiffs.

The Counterclaim

[8] The first-named Defendant, in oral representations to the court and by reference to an undated pleading (of sorts) previously filed by him, formulated his counterclaim as having the following constituent elements.

- (a) **Alleged unauthorised sale by the first-named Plaintiff of the first-named Defendant’s vehicle: £1,500.** The first-named Defendant alleges that he stored his vehicle at the Castlewellan dwelling house. His written pleading states:

“My uncle had no right to sell my vehicle without my permission and the dealer had no right to sell it without all the proper documentation. The sale of this car by my uncle and the dealer without my permission is theft.”

The gist of the Plaintiffs’ defence to this discrete claim was that the first-named Defendant left an old vehicle at the Castlewellan dwelling house and refused to remove it. The Plaintiffs arranged for the vehicle to be stored with a local car dealer who, approximately one year later, sold it for £500, retaining £250 in respect of storage costs. The balance of £250 was paid by the Plaintiffs into the rates account for which the first-named Defendant was liable.

- (b) **Repayment of an alleged loan by the first-named Defendant to the first-named Plaintiff: £500.** In his pleading, the first-named Defendant states:

“Yes, I did loan my uncle ... £500 so he could get a mobility car as he lost his last one because he could not get a deposit. At no time was I told of Dermot Doyle’s application for grant assistance before this deal.”

The contours of this discrete dispute are reflected in the Plaintiffs’ defence, which did not contest the payment of £500 and entailed an assertion that this was a gift to them which they deployed as a deposit for a motability vehicle.

- (c) **Repayment of a second alleged loan by the first-named Defendant to the first-named Plaintiff: £3,000.** In his written pleading, referring to “a new slated roof”, the first-named Defendant states:

“At no time did I agree to provide the £3,000 to effect his [sic] repair. He [the first-named Plaintiff] was given this money to help him out over Christmas and he put down new carpet and whatever else he spent the money on, but it was never put towards the reslating of his roof ...

It was a loan to be repaid as I am paying off his substantial mortgage ...

I will honour my commitments to him and I expect him to honour his commitments to me.”

The essence of the Plaintiff’s defence to this discrete claim was that prior to effecting the subject transfer they had sought grant assistance of £4,000 to effect repairs to the Castlewellan dwelling house. In consequence of the transfer, they became ineligible for this grant and the first-named Defendant agreed to give them £3,000 for this purpose. This, the Plaintiffs contend, was part and parcel of the overall bargain.

- (d) **The amount of mortgage arrears which the first-named Defendant discovered he would have to discharge following the transfer by the Plaintiffs of the Castlewellan dwelling house to him: £4,773.06.** The first-named Defendant’s pleading states:

“This agreement was as much to his benefit as it was mine in that he decided to help me because he was in £4,774.03 mortgage arrears at the time of doing this deal of which he did not tell me about. I only found out about this after he

took legal action against me and made false claims about me. We had a check done on his mortgage situation and found out he had massive mortgage arrears. His redemption figures did not show he owed mortgage arrears or it would have been questioned by me."

The defence of the Plaintiffs entailed, firstly, an acceptance that when the subject transfer was effected, there were mortgage arrears of £4,774.03 in respect of the Castlewellan dwelling house. The Plaintiffs claimed that prior to completion the first-named Defendant, through his solicitors, was aware of this fact. Properly analysed, it seems to me, the Plaintiffs' defence to this discrete claim was that it was a term of the bargain that the first-named Defendant would pay these arrears.

Counterclaim: The Denouement

[9] On the second day of trial, at the outset of the hearing, the first-named Defendant informed the court that he wished to "cancel" his counterclaim. He confirmed that he was formally withdrawing it. He responded negatively when invited to make any further representation to the court.

Disposal

- [10] (a) There will be an order for specific performance in favour of the Plaintiffs against the first-named Defendant in the terms outlined in paragraph [5] above, requiring the first-named Defendant to execute the necessary transfer by 30th September 2012. I have selected this date, in the hope that it will allow sufficient time for other related hearings and judicial adjudications. There will be liberty to apply, in the event that this date falls to be reconsidered.
- (b) I dismiss the first-named Defendant's counterclaim, with judgment in favour of the Plaintiffs in this respect.
- (c) On the issue of costs, the first-named Defendant drew to the attention of the court his alleged impecuniosity. Having considered this, I find no reason for departing from the general rule. Accordingly, the Plaintiffs will have their costs of this part of the action against the first-named Defendant and similarly in respect of the first-named Defendants' counterclaim.
- (d) I order taxation of the Plaintiffs' costs, as legally assisted persons.
- (e) There will be liberty to apply.

The court has not been requested by either party to take any course concerning the extant Mareva Order. This order, therefore, endures.