

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

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL)

COLM McAULEY

Plaintiff

v

AIDAN GRIMLEY

and

**RAYMOND GRIMLEY
and**

MATTHEW GRIMLEY

and

ALAN FOSTER

and

CHARLES McELHONE

Defendants

WEATHERUP J

[1] This is an application by the first, second and third defendants to strike out the plaintiff's claim on the grounds that it discloses no reasonable cause of action, is frivolous or vexatious, may prejudice or embarrass a fair trial and amounts to an abuse of process. Mr Ringland represented the moving parties and Mr O'Donoghue QC and Mr Higgins the plaintiff.

[2] The amended Writ of Summons claims against the first, second and third defendants damages by reason of their trespass to the plaintiff's lands known as Derryhaw Farm at Tynan, County Armagh between May 2007 and December 2008 and secondly damages for misrepresentation that the defendants were the owners of parts of the lands at Derryhaw Farm intending to thwart the plaintiff's attempt to sell a portion of the lands at public auction in January/February 2008 and thirdly damages for blockading the farm in January/February 2008 when the lands were advertised for sale and thus preventing potential bidders from viewing the premises.

[3] The amended Statement of Claim indicates that the plaintiff has been the owner of Derryhaw Farm since 21 May 2007 when he purchased the farm from the fourth defendant for £1.4M. The first defendant is the owner of adjoining lands and the second and third defendants are the sons of the first defendant. It is alleged that during the period from May 2007 to January/February 2008 the defendants trespassed on the plaintiff's lands and caused damage and sought to assert ownership to part of the farm and blockaded an agricultural right of way and obstructed potential bidders from pre-auction inspection of the premises. When the plaintiff placed approximately 52 acres for sale by public auction in January 2008 the auction was said to be blighted by the defendants asserting title to a portion of the plaintiff's lands. Accordingly, the plaintiff was unable to sell the lands at public auction and has been left with a liability to the bank. The bank has now indicated that it would accept an offer of £500,000 for the farm. The plaintiff's contention is that the defendants intended to blight the plaintiff's prospects of sale so that they could acquire the farm at a lower price.

[4] The Defence filed to the un-amended version of the Statement of Claim captures the position of the defendants. They deny alleging ownership of part of the lands offered for sale and say that what has been in dispute has been a right of way in respect of which there have been County Court proceedings. The defendants deny trespass to the plaintiff's lands or any threats or intimidation or that any of their actions had any impact on inspections of the farm or that they interfered with potential purchasers or prevented the sale. Finally they say that the plaintiff is attempting in the present proceedings to re-litigate issues which have already been dealt with or should have been dealt with in the earlier County Court proceedings.

[5] The earlier proceedings were by way of Equity Civil Bill issued in the County Court in 2009 by the present first defendant, Aiden Grimley, as plaintiff, against the present plaintiff, Colm McAuley, as defendant, claiming an injunction and damages for interference with a right of way and trespass and nuisance. A counterclaim was filed in the County Court by the present plaintiff who claimed damages for nuisance and trespass in respect of the lands, an injunction to prevent further trespass and an order requiring re-instatement of the lands.

[6] HH Judge Finnegan QC gave a decision in the County Court proceedings on 26 April 2012. By that decision he stated that the core of the case was a dispute about the exact route of a right of way which he stated undoubtedly existed. He found in

favour of the present plaintiff in respect of the dispute about the right of way. He concluded -

“... the court finds that the Plaintiff’s case (that is Mr Grimley) has not been made out, and on balance the court has decided that the Defendant’s case (that is Mr McAuley) as to the disputed stretch has. The evidence called on the part of both sides as to the remainder of the remedies sought in the claim and counterclaim the court found unsatisfactory and tenuous and accordingly I dismissed both the case and the counterclaim in their entirety.”

Thus there was adjudication on all issues. On the right of way issue there was a clear finding in favour of the present plaintiff and all other claims and counterclaims were dismissed.

[7] Mr Grimley appealed against the finding of Judge Finnegan and that appeal is listed for hearing in the High Court on 10 June 2014. Mr McAuley sought to appeal the dismissal of the counterclaim and in so doing sought to amend the counterclaim to include additional matters. The appeal was dismissed as being out of time.

[8] The defendants contend that the issues raised in the present proceedings have been litigated in the County Court. The plaintiff on the other hand contends that the present claim, which is concerned with the blight of the proposed sale of the lands, was not made in the County Court. Some of the acts of interference relied on as constituting evidence of the defendants intention to blight the sale were relied on in the County Court but were raised in the general claim for trespass and nuisance.

[9] I am satisfied that the claim now being made that the defendants sought to blight the plaintiff’s sale was not made in the County Court. What occurred in the proceedings in the County Court involved reference to a blight of the sale but the matters relied on were not in pursuit of a claim related to the blight of the sale but related to trespass and nuisance and interference with a right of way.

[10] The issue therefore is whether the plaintiff should have raised the claim based on the blight of the sale by counterclaim in the County Court proceedings? The plaintiff says that such a claim exceeded the County Court limit in that the amount of the plaintiff’s present claim is £500,000. Therefore, the plaintiff says that any such counterclaim would have required removal of the proceedings from the County Court to the High Court and the joinder of the other defendants to the counterclaim.

[11] As to the joinder of the second and third defendants in the County Court proceedings it has been accepted by the first defendant that the second and third defendants, who are his sons, were acting as his servants or agents for the purposes of whatever actions they undertook in connection with this dispute. Therefore I do not consider there to be any necessity to add the second and third defendants as parties when it was accepted by the first defendant that he was responsible for his sons.

[12] The plaintiff contends that removal of the proceedings to the High Court would have been complicated and difficult. I have not been persuaded that there was such difficulty as would have prevented the claim for the blighted sale being included in the counterclaim. The matters raised in the present proceedings concerning the alleged blight of the sale of the lands could have been raised by counterclaim and could have been removed to the High Court.

[13] The plaintiff refers to being a personal litigant for part of the hearing of the proceedings in the County Court. It is the case that he had earlier been represented by Cleaver, Fulton and Rankin, solicitors, who had then been discharged so that when the case came on for hearing in the County Court he represented himself until the last day when he recruited Mr Morgan, his present solicitor, who appears to have called a witness on value and closed the case. None of this impacts on the plaintiff's capacity to raise the issue in the County Court.

[14] The defendants contend that in an affidavit in the County Court proceedings the plaintiff referred to potential purchasers being put off by the actions of the defendants. Further the defendants contend that the plaintiff had stated that he wanted the issue of the blight of the sale included in his counterclaim but it had been mishandled by his previous solicitors.

[15] The defendants contend that the present proceedings amount to an abuse of process because the issue of a blighted sale could have been raised in the earlier proceedings. I agree. The dispute between these two farmers was the subject of days of hearings in the County Court. All issues could and should have been raised in the previous proceedings where the matter would have been removed to the High Court.

[16] In Henderson v Henderson [1843-60] All ER Rep 378 it was stated -

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in contest, but which were not brought forward only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which

properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

[17] I see no reason why the claim that the sale was blighted by the actions of the defendants could not have been brought forward in the course of the earlier proceedings. I see no special circumstances which would warrant excusing the plaintiff from not having done so. Accordingly I propose to strike out the plaintiff’s claim.