APPROVED NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Court of Appeal Record Number: 2023/251

High Court Record Number: 2017/72525P
Neutral Citation Number [2024] IECA 67

Noonan J.
Power J.
Meenan J.

IN THE MATTER OF DECOBAKE LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 2014

BETWEEN/

DUBLIN CITY COUNCIL, KATHY QUINN, DEIRDRE MURPHY, DENNIS MCHUGH, ELEANOR BRENNAN, TERENCE O'KEEFFE AND OWEN KEEGAN

RESPONDENTS

- AND –

PAUL COYLE AND MARGARET COYLE

APPELLANTS

BETWEEN/

DECLAN DE LACY, AS LIQUIDATOR OF DECOBAKE LIMITED (IN LIQUIDATION)

RESPONDENT

- AND –

PAUL COYLE AND MARGARET COYLE

APPELLANTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 26th day of March 2024

Introduction: -

1. This is an appeal from the judgment and order of Cregan J. which granted the respondents "Isaac Wunder" orders on the application of the liquidator of Decobake Limited (the Company), Dublin City Council and named officials against Mr. Paul Coyle (the first named appellant) and Mrs. Margaret Coyle (the second named appellant), directors of the Company. In addition, an order was made restraining both appellants communicating directly with the named officials of Dublin City Council in relation to any matter concerning legal proceedings other than through the solicitor instructed by the Council.

2. The Company had as its business the sale of baking products and carried on its business from a number of premises, including one situate at Bachelor's Walk, Dublin 1.

3. The Company failed to discharge any of the local authority rates in respect of its premises despite numerous demands for payment by Dublin City Council. Proceedings were issued against the Company and a decree/warrant for execution in the amount of €13,878 was granted on 7 May 2015 by a Judge of the District Court. Though on notice of these proceedings, the first named appellant issued a motion later in 2015 seeking to set aside the decree on grounds of lack of notice. The first named appellant appeared in court and sought to represent the company on the basis that he was a director. On being informed by the Judge that he was not entitled to do so, the first named appellant, according to an affidavit

filed on behalf of Dublin City Council *"-- began shouting at the judge and then walked out of court."*

4. Inevitably, the Company was wound up. This resulted in the court-appointed liquidator and his staff becoming targets for numerous and unmeritorious legal proceedings commenced by the first named appellant. Dublin City Council were also the target of unmeritorious proceedings. The liquidator, his staff, and officials of Dublin City Council were also subjected to unfounded allegations of fraud, theft and corruption made by the first named appellant.

5. Given the situation facing both the liquidator and Dublin City Council, an application for "Isaac Wunder" orders was made to the High Court.

Judgment of the High Court: -

6. The Trial Judge delivered a comprehensive and detailed judgment. The Trial Judge considered the application for an adjournment by the first named appellant. This application was grounded on an affidavit sworn by the first named appellant and, in a second affidavit, exhibited a medical report concerning a medical condition suffered by the first named appellant. In recognition of the appellant's privacy the Trial Judge referred to the condition as *"medical condition A"*. The Trial Judge considered the medical condition against a background of the first named appellant filing a considerable number of affidavits, both in support of his application for an adjournment and against the orders being sought by the liquidator and Dublin City Council. He concluded that the medical condition did not amount to the impediment contended for by the first named appellant. Though the application for an adjournment was refused, the Trial Judge stated: -

> *"104. Mr. Coyle did not appear at the hearing of the application, nor did anyone appear on his behalf. However, although he did not appear in person, I am of the view that Mr. Coyle participated in this hearing by virtue of the affidavits which he filed in*

the application - all of which I have read - and also by the filing of detailed legal submissions which I have also read and considered."

7. Over some 13 pages of his judgment the Trial Judge set out, in detail, the litigation involving the appellants. Included in this were lengthy High Court actions and appeals both to the Supreme Court and to this Court. I will not in this judgment repeat the exhaustive list but, like the Trial Judge, will append to this judgment a table, (Appendix A) exhibited by the liquidator in his grounding affidavit, which sets out the numerous applications issued by the first named appellant. The Trial Judge stated: -

"2. The affidavits filed by the liquidator and Dublin City Council set out an appalling litany of behaviour by Mr. Coyle (supported by his wife, Mrs. Coyle) from which it is clear that Mr. Coyle has engaged in an entirely malicious and unacceptable vendetta against the liquidator of Decobake and Dublin City Council (and some of its employees) for a period of about six years. He has launched failed application after failed application - all of which have been dismissed by the High Court, the Court of Appeal and/or the Supreme Court. In many of these applications, costs have been awarded against him personally but as he is - apparently - impecunious, there is no reasonable prospect of the liquidator or Dublin City Council recovering their costs."

8. Referring to correspondence from the first named appellant to Dublin City Council and the liquidator, the Trial Judge stated: -

"95. In addition, Mr. Coyle has seen fit to repeatedly send letters and emails to individual employees of Dublin City Council, despite the fact that they have solicitors on record in all of these matters. A selection of the correspondence was exhibited with the affidavits and I have reviewed these letters. I have to say that it must be unnerving for individual employees of Dublin City Council to have to open their emails on any given day and wonder whether another vulgar, threatening and abusive email has

arrived in from Mr. Coyle. Given that all of this derives from a rates bill which he says he did not dispute, and as a result of which his company was put into liquidation, it is an astonishing situation."

9. The Trial Judge reviewed the numerous authorities on the granting of "Isaac Wunder" orders starting with *Wunder v Irish Hospitals Trust (1940) Limited* (Unreported, Supreme Court, 24 January 1967). I will refer to the two most recent decisions of this Court. In *Kearney v Bank of Scotland* [2020] IECA 92, Whelan J. set out some 12 factors which a court could have regard to in applications for "Isaac Wunder" orders: -

"Isaac Wunder orders now form part of the panoply of the courts' inherent powers to regulate their own process. In light of the constitutional protection of the right of access to the courts, such orders should be deployed sparingly and only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances:

i. Regard can be had by the court to the history of litigation between the parties or other parties connected with them in relation to common issues.

ii. Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or then legal representatives or other professionals connected with the other party to the litigation.

iii. The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder type order restraining the prosecution of litigation or the institution of fresh litigation is made.

iv. Regard may be had to the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of

the making of the order by defendants and indeed by past defendants in applications connected with the issues the subject matter of the litigation.

v. The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.

vi. It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is intended to operate preferably as an early-stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.

vii. Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.

viii. Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human Rights by Article. 6 to which the courts have had regard in the administration of justice in this jurisdiction since the coming into operation of the European Convention on Human Rights Act 2003.

ix. The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the

instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined.

x. Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level.

xi. An Isaac Wunder order may have serious implications for the party against whom it is made. It potentially stigmatises such a litigant by branding her or him as, in effect, "vexatious" and this may present a risk of inherent bias in the event that a fresh application is made for leave to institute proceedings in respect of the subject matter of the order or to set aside a stay granted in litigation.

xii. Where a strike out order can be made or an order dismissing litigation whether as an abuse of process or pursuant to the inherent jurisdiction of the court or pursuant to the provisions of O. 19, r. 28, same is to be preferred and a clear and compelling case must be identified as to why, in addition, an Isaac Wunder type order is necessitated by the party seeking it."

10. In *The Irish Aviation Authority v Monks* [2019] IECA 309 Collins J. stated: -

"The court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis for that conclusion in terms which enable its decision to be reviewed."

11. The Trial Judge considered the position of the second named appellant stating: -

"122. Regrettably, Mrs. Coyle has allied herself to her husband in this utterly unmeritorious campaign and the Isaac Wunder order should also encompass her. The Isaac Wunder order should also encompass Mrs. Coyle because it is clear, in my view, that Mr. Coyle would seek to get around the Isaac Wunder order by ensuring that such applications were brought in the name of his wife to continue his unscrupulous campaign."

12. The Trial Judge also considered the abusive emails and correspondence sent to Dublin City Council and its officers and made an order restraining both appellants from writing, emailing or communicating directly with Dublin City Council and its employees named in the proceedings. The Trial Judge directed that all future communications from the appellants be directed to the solicitor instructed by Dublin City Council.

Notice of Appeal: -

13. Although the appellants failed to attend the hearing before Cregan J. they lodged a Notice of Appeal. The grounds of appeal, *inter alia*, consisted of the following: -

(i) The Trial Judge erred in law and in fact by proceeding with the application whereby the first named appellant was "medically unfit" to attend the court.

(ii) The Judge erred in law by refusing the first named appellant such provisions as to assist him as set out in the Disability Act 2005 and/or United Nations Convention for Persons with Disabilities.

(iii) The Judge erred in law in making an order "where no such provisions exist in the Companies Act 2014".

(iv) The Judge erred in law and breached the constitutional rights of the appellants "innocent parties not part of the proceedings and/or on notice of the proceedings".

(vi) The Judge erred in fact and in law by allowing himself to be drawn into matters that were "purely pursued for personal gain by the applicants and not for any legal principles that would justify such an order."

14. In support of their appeal the appellants relied on: -

(i) The Disability Act 2005.

(ii) United Nations Convention on the Rights of Persons with Disabilities.

(iii) Companies Act 2014.

(iv) Charter of Fundamental Rights of European Union.

(v) Counsel of Europe Statute 1999.

(vi) Bunreacht na hÉireann 1937.

Consideration of appeal: -

15. The first matter which the appellants made submissions on was the refusal of the Trial Judge to allow an adjournment. Central to this submission was a medical report dated some months after the hearing in the High Court which the appellants sought to introduce as new evidence. This application was denied by the Court. Other than a generalised complaint of an alleged inability to deal with the court hearing, the first named appellant put forward no grounds upon which this Court could reverse the Trial Judge's decision to refuse an adjournment.

16. In support of the appeal, the appellants filed written submissions. These submissions were the same submissions as were filed in the High Court. There was no mention of the judgment of Cregan J., nor any submissions made in support of any of the grounds of appeal. There was no submission made to the effect that the Trial Judge did not cite the appropriate legal authorities or failed to apply the correct principles.

17. The first named appellant made an oral submission to the court relying, to a considerable extent, on Regulation (EU) 2015/848. This Regulation concerns the jurisdiction

of the courts of Member States in insolvency proceedings. It clearly has no relevance to the issue in these proceedings. In support of his reliance on an irrelevant Regulation, the first named appellant referred the Court to the opinion of the Advocate General in *NK (Liquidator in the Bankruptcies of PR Gerechtsdeurwaarderskantoor BV and PI against BNP Paribas* Case C: 353/17). Again, this case has no relevance to the issues in these proceedings. The first named appellant concluded these pointless and irrelevant submissions with a request that this Court refer a question to the European Court of Justice. Needless to say, this Court will not do so.

18. As referred to at para. 9 above, Cregan J. cited the judgment of this Court in *Kearney v Bank of Scotland* [2020] IECA 92 where Whelan J. listed some 12 factors which a court ought to have regard to in deciding whether or not to grant an "Isaac Wunder" order. All of the factors identified by Whelan J. that point to the granting of such an order are present in this case. The appellants have made *"scurrilous or outrageous statements"* as was found by the Trial Judge. The appellants made no attempt to inform either this Court or the High Court that they would refrain from instituting further proceedings against the respondents.

19. Further, Whelan J. made reference to the issue of costs. In this case numerous orders for costs have been made against the first named appellant. It does not appear that any serious effort has been made to recover these costs. Perhaps this is understandable as proceedings enforcing cost orders would likely lead to further protracted litigation, possibly resulting in further costs orders in favour of the respondents against the appellants. In theory, the fear of being the subject to a costs order ought to act as a deterrent from engaging in pointless litigation. Unfortunately, that is not the case here.

20. As per Whelan J. in considering whether or not to grant an "Isaac Wunder" order, the Court should carry out a balancing exercise between the rights of the parties. The appellants have a right of access to the courts, but the respondents have a right not to be subjected to

repeated unmeritorious and costly litigation. In this case the balance clearly lies, as was found by the Trial Judge, in favour of granting the orders sought.

21. As was referred to above, the Trial Judge also made an order restraining the appellants from emailing or communicating directly with the respondents or their officials. This order was made in the High Court having reviewed the behaviour of the appellants. In the course of the hearing of this appeal, the appellants did not attempt to convince this court that the Trial Judge was in error in granting such an order.

Conclusion: -

22. By reason of the foregoing, I will dismiss the appeal. As the respondents have been *"entirely successful"* the provisional view of the Court is that the respondents are entitled to an order for costs against the appellants. Should the appellants wish to dispute this, they may do so by filing written submissions (not in excess of 1,000 words) within 14 days from the date hereof. The respondents may reply to such submissions (not exceeding 1,000 words) within 14 days thereafter. In default of such submissions being received, an order in the terms proposed will be made.

23. Noonan and Power JJ. have authorised me to record their agreement with this judgment.

APPENDIX A

Summary of applications brought by Mr. and Mrs. Coyle

1	26 July 2017	Paul and Margaret Coyle appealed the Order of the High Court of 24 July 2017 winding up company.	Appeal dismissed by Court of Appeal on 15 July 2019 and Petitioner's and the Liquidator's costs were awarded against Paul and Margaret Coyle.
2	26 July 2017	Paul and Margaret Coyle issued a motion seeking stay on High Court Order of 24 July 2017 winding up company.	Stay refused by Order of Court of Appeal on 28 July 2017 with costs granted to Petitioner and the Liquidator as costs in the liquidation.
3	9 August 2017	Paul Coyle issued his own Plenary Proceedings bearing High Court Record Number 2017/ 7276 P.	By High Court Order of 12 October 2017 proceedings struck out on consent with liberty to re-enter and the costs of the motion and proceedings were reserved to the hearing of the action in the Liquidators proceedings.
4	9 August 2017	Paul Coyle issued motion seeking interim injunctive relief.	By High Court Order of 9 August 2017 interim injunctive relief refused and liberty granted to issue a motion.
5	13 October 2017	Paul Coyle issued a motion seeking to vary paragraph 1(g) of the High Court Order of 8 August 2017.	Order 1(g) varied by High Court Order of 20 October 2020, with costs reserved.
6	20 November 2017	Paul Coyle issued a motion November seeking, *inter alia*, to dismiss the liquidators said proceedings, providing leave to seek a motion to remove the Second, Third and Fourth Named Defendants from the interlocutory injunction and an order seeking lease to seek a motion for equitable relief in the matter of the dispute over intellectual property rights, identified in paragraph (h) of High Court Order of 8 August 2017 - none of the reliefs sought were granted on 24 November 2017.	No reliefs granted; the High Court gave further directions in relation to exchange of pleadings on 24 November 2017.

7	17 April 2018	Paul Coyle issued motion seeking 22 categories of discovery in Liquidators Plenary Proceedings (2017/ 7252 P).	High Court Order made on 31 July and 2 October 2018 granting certain categories of discovery and costs of motion were costs in the cause.
8	24 January 2018	Paul Coyle issued a motion seeking, *inter alia*, to dismiss a Deponent's motion for fees as Provisional Liquidator pending the outcome of certain proceedings.	Motion dismissed on 5 March 2018 - Liquidators costs granted as costs in the winding up of the Company and in the event that those costs were not recoverable it was ordered that the liquidator recover the costs against Paul Coyle.
9	23 February 2018	Paul Coyle issued a motion seeking thirty-one categories of discovery in context of liquidator's motion seeking to fix amount of costs of provisional liquidation and to recover the costs against Paul Coyle.	Motion dismissed on 5 March 2018 and Liquidator granted his costs as costs in the winding up of the Company and in the event that those costs were not recoverable it was ordered that the liquidator
10	20 March 2018	Paul Coyle issued two appeals against High Court Order of O'Regan J. dismissing both his motions.	Order made by Court of Appeal on 23 July 2020 dismissing both appeals with costs to the Liquidator against Paul Coyle unless Appellant complies with courts directions, appeal listed for hearing on 14 September 2020.
11	11 April 2018	Paul Coyle issued a motion seeking, *inter alia*, a stay on the High Court Order of 5 March, 2018 fixing liquidators remuneration.	Refused by Court of Appeal on 27 April 2018; liquidator granted the costs of the motion as costs in the winding up of the Company with an order over against Paul Coyle.
12	16 May 2018	Paul Coyle issued motion seeking interim injunction seeking to restrain the Company from proceedings with a retail sale event at the retail premises in Clane.	Motion dismissed on 18 May 2018 with costs to the Company against Paul Coyle.
13	5 October 2018	Paul Coyle issued motion seeking, *inter alia*, to remove Declan De Lacy as liquidator for cause shown and to annul the liquidation.	Motion dismissed on 26 February 2020 with costs to Liquidator against Paul Coyle and such costs to be costs in the liquidation.

14	4 April 2019	Paul Coyle issued a motion seeking to adjourn hearing of appeal against winding up order of 24 July 2017 listed for hearing on 31 May 2019.	Motion dismissed by Court of Appeal on 12 April 2019, with costs to Petitioner and Liquidator and such costs, costs in the cause of Paul Coyle's Motion issued on 5 October 2018. High Court Order of 26 February 2010 costs granted to Liquidator and Petitioner against Paul Coyle, such costs to be costs in the liquidation.
15	8 May 2019	Paul Coyle issued a motion seeking to set aside the Order of Keane J.; on the 24 July 2017 winding up the Company and appointing a Deponent as liquidator.	Motion dismissed on 26 February 2020 with costs to Liquidator against Paul Coyle and such costs to be costs in the liquidation.
16	4 June 2019	Paul Coyle issued a motion seeking, *inter alia*, an Order pursuant to section 681 of the Companies Act, 2014 seeking to compel the Liquidator to file Form E4s.	Motion dismissed on 26 February 2020 with no order as to costs.
17	19 June 2019	Paul Coyle issued a motion in liquidators' plenary proceedings bearing High Court Record No. 2017/ 7252 P seeking to release the discovery obtained therein to the Trial Judge hearing the Companies Acts motions.	Motion refused on 26 June 2019, with costs to the Liquidator against Paul Coyle.
18	23 August 2019	Paul Coyle issued a second motion seeking the release of the discovery obtained in the Plenary Proceedings bearing Record No. 2017/ 7252 P to the trial judge hearing the motions in the within proceedings.	Motion dismissed on 26 February 2020 with costs to Liquidator against Paul Coyle.
19	14 October 2019	Paul Coyle served motion in Companies Act proceedings of three categories of documents: Notice of Motion is dated 14 October 2019 and grounded on affidavit of seeking discovery Paul Coyle of the same date	Motion appears not to have been issued.

20	15 October 2019	Application by Paul Coyle that Mr. Justice Allen should recuse himself from hearing motions listed before the Court.	Application refused on 15 October 2019 with no further Order.
21	15 October 2019	Application by Paul Coyle seeking a reference to the European Court of Justice.	Application refused on 15 October 2019 with no further order.
22	28 May 2020	Paul Coyle appeals seven of Mr. Justice Allen's Orders to the Court of Appeal dismissing all of his motions and applications in the High Court.	Listed for directions hearing on or about 9 October 2020.