

THE HIGH COURT

[2022] IEHC 728

[Record No. 2014/1416S]

BETWEEN

BANK OF IRELAND MORTGAGE BANK

PLAINTIFF

AND

NIALL HADE AND JOYCE HADE

DEFENDANTS

[Record No. 2014/4328P]

BETWEEN

NIALL HADE

PLAINTIFF

AND

BANK OF IRELAND MORTGAGE BANK AND MICHAEL MCATEER

DEFENDANTS

**RULING of Mr. Justice Barr on Application to Reopen the Case and Final Orders delivered
21st December, 2022.**

1. These two actions were heard together over seven days between 11th October, 2022 and 20th October, 2022. In summary, in the first action, the bank was seeking summary judgment against the defendants on foot of two loans which they had with the bank. The defendants to that action, Mr. and Mrs. Hade, had a defence and counterclaim, wherein they sought damages against the bank for what they perceived as being alleged wrongdoing on the part of the bank in connection with the loans and in relation to certain mortgages that had been executed as security for the loans.

2. In the second action, Mr. Hade was suing the bank and the receiver in respect of alleged wrongdoing on the part of the bank in appointing a receiver and in respect of alleged wrongdoing on the part of the receiver in selling some of the properties and in allegedly mismanaging other properties, over which he had been appointed.

3. At the conclusion of the hearing of evidence in the cases, the parties were given a period within which to furnish written submissions. They were also given an opportunity to furnish further

supplemental submissions, in response to the written submissions that had been lodged by the other party.

4. On 25th November, 2022, the court delivered a reserved judgment in both actions, which is reported at [2022] IEHC 645.

5. In the judgment delivered by the court herein, the bank obtained summary judgment against the defendants jointly and severally on foot of the two loans. In the plenary proceedings that had been brought by Mr. Hade, he obtained an award of exemplary damages against the receiver in respect of the wrongful taking of possession of some of the properties and the wrongful sale of some of the properties. At the conclusion of the judgment, the parties were allowed a period of two weeks within which to furnish further written submissions on the terms of the final orders in each case and on costs and on any other matters that may arise.

6. In written submissions dated 8th December, 2022, which run to some 17 pages, the bank and the receiver have urged the court to reopen certain aspects of the case, to enable them to call evidence thereon and to make further oral legal submissions. In support of that application they rely on a number of authorities; they rely primarily on the cases of *Re McInerney Homes Ltd* [2011] IEHC 25 and *HKR Middle East Architects Engineering LLC v. English* [2021] IEHC 376.

7. In his further written submissions, which are undated, Mr. Hade has pointed out what he perceives as being a number of errors in the judgment delivered by this court. However, he has objected to the matter being reopened.

8. The court has carefully considered all the matters raised in the submissions made by each of the parties. The court is satisfied that where there are "strong reasons" for doing so, the court has jurisdiction to reopen the hearing of a matter, either for the purpose of taking further evidence and/or for the purpose of receiving further submissions, after the time when judgment has been delivered, but prior to the date when the final order of the court is perfected.

9. However, it is clear from the authorities cited by the parties and from the authorities cited in those judgments, that this is a jurisdiction that should be exercised sparingly and only where the interests of justice demand that the matter should be reopened. The general rule remains that once a final judgment has been delivered by the court, that ought to be the end of the matter, subject to any right of appeal that the parties may elect to pursue.

10. From reading the authorities closely, it would appear that this jurisdiction is intended to be exercised in two sets of circumstances: first, where there has been a manifest error made by the judge in reaching his or her judgment. Usually, the error will be reasonably obvious and there may be agreement between the parties that an error had been made by the judge. In his judgment in the HKR case, McDonald J. gave as an example of where an error had been made: a previous case of his own, where he had been dealing with an application pursuant to s. 117 of the Succession Act 1965. In the course of that hearing, evidence had been tendered by one of the parties, to which exception was taken to its admissibility by the other party. A decision was made to hear the evidence *de bene esse* and to reserve the question as to its admissibility for later argument. At the conclusion of the case, counsel for the party who had objected to the introduction of the evidence, indicated that he was not pursuing that objection. However, in reaching his judgment, the judge specifically stated that he had not taken account of that evidence, as objection had been taken to its admission. After the judgment had been delivered, the parties agreed that the judge had made an error in relation to the issue of the admissibility of that evidence and brought that fact to his attention; whereupon he reconsidered his judgment.

11. Other examples of where an error may be made which would enable the judge to reopen the case, would be where there had been an error in computation of certain heads of damages; or where a judge had omitted to consider the interests of one of a number of statutory claimants e.g. statutory dependents in a fatal injuries action under Part V of the Civil Liability Act 1961.

12. The second main ground on which a judgment may be reopened is where new facts emerge which have a significant bearing on the findings made in the substantive judgment. In the *McInerney* case, Clarke J. (as he then was) had refused to sanction a particular scheme of arrangement in an examinership, on the basis that it was unfairly prejudicial to a banking syndicate, which was owed money by the company. Subsequent to the delivery of the judgment, it emerged that two members of the banking syndicate were likely to have their loans taken into NAMA, which would have the consequence that the banks' arguments that a long-term receivership would yield a better result for them, was unlikely to come to pass. This information only became available to the parties proposing the scheme of arrangement, after the judgment had been delivered. Clarke J. considered that these new facts warranted the reopening of the substantive matter.

13. A further example cited in one of the cases that was cited in *Paulin v. Paulin* [2010] 1 WLR 1057, was where an award of damages had been made in respect of a widow and her children in respect of the wrongful death of her husband, but when the judgment was delivered, the judge was unaware and had not been told that the widow had in fact remarried some short time earlier. On this account he reopened the judgment.

14. In their comprehensive submissions, the bank and the receiver have argued that in this case there are a number of errors in the judgment concerning certain findings that were made by this court. They do not point to one determinative, or obvious error of fact, but rather rely on what they perceive as being a number of factual and/or legal errors contained in the judgment.

15. Having carefully considered the submissions, I am of the view that it is not appropriate to reopen the hearing of either of these cases. The matters that are raised by the bank and the receiver in relation to what they perceive as being errors in the substantive judgment, are matters that are more properly raised in a notice of appeal. Similarly, the perceived errors in the judgment according to Mr. Hade, are also matters that should be raised by him in his notice of appeal, if he wishes to contest all, or any part of the judgments in the two cases.

16. A further reason by the court is of the view that it is inappropriate to reopen the hearing of this case, is the fact that two of the parties to the actions are acting as lay litigants. The court is conscious that if the matter is reopened at the behest of the bank and the receiver, the court will have to allow Mr. and Mrs. Hade to reopen matters that may be of concern to them. In short, the court is of the view that were it to accede to the application made on behalf of the bank and the receiver, it would effectively be reopening, if not the entirety of the two cases, certainly a very large proportion of them. It is not in the interests of justice that this relatively substantial piece of litigation, which took seven days at hearing in the High Court, should effectively be rerun almost in its entirety. For these reasons, the court refuses the application made on behalf of the bank and the receiver to reopen either of these cases, or to reconsider its judgment already delivered in these cases.

Costs.

17. For the reasons set out in its judgment, the court is of the view that the justice of the case is best served if there is no order for costs in either case.

Final Orders.

18. The final orders in each of the actions shall be in the following terms:

The Summary Proceedings (Record No. 2014/1416 S).

- (i) Award judgment to the plaintiff against the defendants jointly and severally in the sum of €2,026,640.09;
- (ii) Award judgment to the plaintiff against the first defendant in the sum of €1,412,210.09;
- (iii) Dismiss the defendants' counterclaim against the plaintiff;
- (iv) There shall be no order as to costs on the claim, or the counterclaim;
- (v) There will be a stay on the judgment and on the order for costs for 28 days from the perfection of the order and if a notice of appeal is lodged by any party within that time, either against this judgment, or against the judgment in the allied case bearing record number 2014/4328 P, the stay is to continue until the final determination of the matter before the Court of Appeal.
- (vi) Liberty to apply.

The Plenary Proceedings (Record No. 2014/4328 P).

- (i) Award judgment in favour of the plaintiff against the second defendant in the sum of €550,000;
- (ii) The plaintiff is entitled to a declaration that the second defendant is not entitled to possession of 29 Kingswood Heights, Dublin 24, or 4 Taobh Na Coille, Dublin 24, without an order of the Circuit Court; there will be a stay on this declaration for six months to enable the second defendant to bring the necessary application before the Circuit Court;
- (iii) Dismiss the plaintiff's action against the first defendant;
- (iv) There shall be no order as to costs in the action;
- (v) There will be a stay on the judgment and order for 28 days and if a notice of appeal is lodged by any party within that time, either against this judgment, or against the judgment in the allied case bearing record number 2014/1416 S, the stay shall continue until the final determination of the matter before the Court of Appeal.
- (vi) Liberty to apply.