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

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2013/53330

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

ON APPEAL FROM THE MASTER'S COURT

Between

BRENDA HARKIN

Plaintiff/Appellant

and

BRENDAN KEARNEY & CO, SOLICITORS
SEAN FOX T/A GLEN BUILDERS LIMITED
PAT FAHY, SOLICITORS
ADP ARCHITECTS
PLANNING DEPARTMENT
LAND REGISTRY
DRD ROAD SERVICE
GREENBELTGROUP LIMITED
MEMERY CRYSTAL, SOLICITORS
COLLEYS EVALUORS
BIRMINGHAM MIDSHIRES
ARTHUR COX & CO, SOLICITORS
CRL MANAGEMENT LIMITED

O'HARA J

Introduction

[1] The plaintiff is a litigant in person who has appealed against a decision dated 8 January 2015 by Master McCorry in which he dismissed her claims against the third to thirteenth defendants in this action. He did so under Order 18 Rule 19(1)(a) of the Rules of the Court of Judicature on the basis that the pleadings disclosed no reasonable cause of action. The Master's decision extends to 29 paragraphs in the course of which he sets out the background to the case, summarises the relevant legal principles,

makes allowances for the plaintiff representing herself, analyses the Amended Statement of Claim and then considers the pleaded case against each defendant. He concludes at paragraphs 27-29 by emphasising that while the courts recognise the difficulties experienced by personal litigants, they also have to protect their jurisdiction for the common good and that claims which are based on a duty which does not and could not exist are uncontestably bad.

[2] The plaintiff has presented file after file of documents which she has asked to be considered as part of the case. However, Order 18 Rule 19(2) provides that:

“No evidence shall be admissible on an application under paragraph (1) (a).”

The rationale of that rule is clear – what is being analysed is whether in the Statement of Claim one can follow a thread in respect of each defendant which starts with the facts which are alleged, continues with an identified duty owed to that defendant and a breach of that duty and concludes with the plaintiff having suffered loss and damage as a result. Whatever “evidence” is contained in the plaintiff’s files is irrelevant to that exercise.

[3] Almost at the end of the appeal hearing the plaintiff appeared to ask for the case to be adjourned so that she could apply for orders for discovery which would, she asserted, reveal evidence supporting her claim. It then emerged that the fresh evidence would reveal or confirm that she does not have proper title to the house which she bought and which lies at the heart of this case. However, as Master McCorry’s judgment shows at paragraph 11 it is the plaintiff’s case that she bought property from the second defendant, using the first defendant as her solicitor and then found that she had not received good title. For the purposes of the present applications that contention is accepted at face value. That being so, adjourning the appeal in order to allow her to seek this discovery is entirely unnecessary.

[4] The second defendant is the developer and vendor of the development within which the property bought by the plaintiff is located. He did not apply to strike out her case. Accordingly, her claim against him will proceed. The first defendant is sued as the solicitor who represented and advised the plaintiff for the purposes of her purchase of the site and house. The Master struck out the claim against him but only in part. He has allowed the case to proceed on the basis of negligence and breach of contract and has only dismissed the allegations of fraud. This is significant because if it is the case that the plaintiff has bought a property with defective title the two obvious and central defendants must necessarily be the vendor who was supposed to give her title but did not and her own solicitor who was supposed to represent and protect her interests but did not.

[5] Regrettably, the plaintiff has spent a number of years, much effort and money in devising an alternative and significantly broader line of attack. I was informed by counsel for the various defendants that both Master McCorry and Master Bell who

had previously been engaged with the case had urged the plaintiff to reconsider whether she needed to continue with her expansive claim against multiple defendants and whether she could in fact do so. Despite their suggestions she has continued as she started.

[6] I heard submissions on behalf of each of the defendants and the plaintiff's response to them. Having done so, I am more than satisfied that the plaintiff's appeal against the decision of Master McCorry is entirely without merit for the reasons set out clearly and comprehensively by him. The plaintiff has a particular grievance with the third defendant who she believes was a joint developer with the second defendant of the property which she bought and who was the vendor's solicitor. However, the claim of fraud against him, as with the other defendants, is not made out for the reasons set out by the Master and the third defendant owed no duty to her in his actions as a solicitor.

[7] So far as the fourth to thirteenth defendants are concerned there is simply no valid recognisable or identifiable claim set out in the Statement of Claim which is now in its third format, the plaintiff having been given time an opportunity to reconsider and amend and regularise her case. The plaintiff's case against the fourth to the thirteenth defendants is that they were induced by the second and third defendants to provide fraudulent assistance to them, by the exercise of undue influence over them, so as to alter the property which she had intended to buy to the one with which she has ended up. Quite apart from the fact that such a chain of events is inherently unlikely, the plaintiff has not set out in her Statement of Claim an identifiable or coherent cause of action against any of these defendants. During the course of the appeal the plaintiff sought to explain her theory that after planning permission for the development had been granted the second and third defendants found that they were landlocked so that they worked with the other defendants to secure a return of some of the land in order to give them the required access. On this basis she suggested that maps and other documents had been improperly altered or removed, that public authorities such as Land Registry and the Planning Department had been involved and that also involved were the valuers and solicitors for the building society from which she obtained her loan. It is hard to make sense of this and it is impossible to identify from the Statement of Claim any fraud, deceit, negligence or breach of statutory duty beyond the case which has been allowed to proceed against the first and second defendants.

[8] The plaintiff also alleged against some defendants that her human rights had been breached. This contention has not been developed in any coherent way and was not addressed in any meaningful way in her submissions. The only variation I make to the Master's decision in this appeal, largely to remove any doubt, is to strike out any allegation made against any defendant of breach of her human rights. This will not impact in any way on her claim as it continues against the first and second defendants.

[9] In these circumstances the plaintiff's appeal against the Master's Order is dismissed.