

Neutral Citation No. [2010] NICH 3

<i>Ref:</i> DEEA4926.T

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

<i>Delivered:</i> 25/01/2010

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

LIGGETT & LIGGETT

Plaintiffs;

and

HARRISON

Defendant.

DEENY J

This is an action brought by a husband and wife Terence Noel Liggett and Denise Liggett trading as Period Homes against Melanie Harrison. For part of the time during which these matters were in dispute, she was married and was known as Melanie Brownlee. The action relates to the development of land in the ownership of the defendant. The plaintiffs were builders who were building houses on the land and then paying site fines to the defendant when the houses were sold. Unhappily a serious of disputes arose between the parties, the development has not been completed, and I was informed this morning that the site is closed at the

present time. The matter comes on for hearing today in the still relatively unusual situation where neither party is represented by solicitors or counsel. Both parties withdrew instructions from solicitors and counsel previously instructed on their behalf, because of lack of means, the court was told. They are entitled of course to proceed in their own names as parties and to appear before the court but the rules and directions of the court still apply to them as much as to professional lawyers. That is not in anyway punitive of the parties but to ensure that justice is done and is seen to be done. A number of issues arose at the commencement of this hearing today and I will mention them briefly. Firstly, the plaintiffs had served a subpoena on apparently the 24th December on a banker to produce documents relating to the monies that the defendant had received by way of site fines in which they had been lodged in one or more accounts of hers. The banker concerned is out of the jurisdiction and unable to attend but Miss Harrison in what I view as a constructive way makes no objection to the documents being put in evidence and therefore the registrar should record that those documents exhibited to Mr Tony Green's letter of 18th January 2010 may be given to both parties. I think it is not necessary to give the personal details of his travels but only the information about the site fines and a facility provided by the bank. Secondly, the parties, perhaps not surprisingly in the circumstances, had not discussed whether or not the documents in the bundles before the court were agreed but both parties are happy that they be treated as agreed without further proof, that is documents not pleadings or submissions, or opinions but documents such as the agreements between the parties. Next an issue had been taken in the pleadings as to whether the second plaintiff who spoke on

behalf of the two plaintiffs, that is Mrs Denise Liggett was a proper party to the action. She explained that she was as I have mentioned the wife of the first plaintiff, who had made an agreement with the defendant, a licence agreement, for the exploitation of this site. However, she says that not only do her assets secure the funding of this but that she has power of attorney and as a matter of practice she signed contracts relating to the development of the site while her husband was chiefly concerned with the actual building and Miss Harrison again constructively said that she was content for her to continue. There might have been an issue if she had not been a party as to whether she could have continued as a lay advocate, but it may be that this is one of those situations that could be described as exceptional, even if the court ultimately found that she was not properly a plaintiff in the action; it may be one of those exceptional situations that had been contemplated such as in Re G [2005] EWCA Civ 347. However, two matters remain outstanding. The more important of these is that amongst the court's papers was a report which I have been told has been prepared by the well known forensic accountants Messrs Harbinson Mulholland. The report was addressed to Mrs Liggett's former solicitors and it is dated 31st March 2008 but it had never been served on Miss Harrison. Mrs Liggett had said and I accept that she was very candid with the court that there had been several versions of it partly as events changed on the ground and more recently with the update in figures. That maybe so but it clearly ought to have been served a considerable time ago on the defendant, at the very least in draft. I see the directions issued by the Commercial Judge on the 27th May 2008 expressly say at paragraph 4 "that statements of evidence - reports from expert witnesses shall be exchanged and

agreed as soon as practicable". In fairness to both parties there doesn't seem to have been express reference to this in the subsequent reviews but that goes much more against the plaintiffs than the defendants ie the court was not told and Miss Harrison was not told that there was such a report whether it was being updated or not. Mrs Liggett says that in the course of negotiations, and the court has been told that there were attempts to mediate these matters which unhappily did not succeed, that reference was made to such a report. But even if I accept that it is entirely unreasonable to provide any party with a detailed report of at least fifty four paragraphs on the day before the case is listed for hearing, or even a day or two before. That is excacerbated when the party who receives the report does not have their own accountant and does not have solicitors or counsel. It would be completely unjust to force Miss Harrison to go on in those circumstances. It would be trial by ambush. The issue then arises as to what is to happen. Miss Harrison says that she has gone to considerable length to be here for this trial today and she has two young children aged four years and five months and I completely accept that. Therefore she urges on the court and it is right to say the court has the power to do this to exclude the report and to force the plaintiffs to go on without it. Mrs Liggett for her part however points out that not only have they expended money on the report and they have a Mr Brendan Dwyer ready to prove it, as a forensic accountant, but that in her view it was vital that they be able to call him and use the report. It is complicated slightly by the fact that I have read the report myself and I can understand why she would take that view. The court therefore has to make a decision between the conflicting submissions of the two parties. I take into account

the fifth of the matters that were discussed on sitting today, namely, that whereas the defendant has furnished a helpful skeleton argument to the court tackling some or perhaps in her view all of the issues before the court there is no statement of issues or chronology from the plaintiffs. Again this ought to have been provided. It is in the printed directions of the court given as long ago as May 2008. One could understand a lay person omitting to provide the summary of propositions of law to be advanced but there ought to have been a summary of issues and there ought to have been a chronology of events. On the other hand the skeleton argument provided by Miss Harrison has only been served, I think, last night or certainly over the last weekend on the plaintiffs. It seems to me therefore that is something that should be absorbed by the plaintiffs and they should respond to it as to narrow the issues here either to realise where Miss Harrison has a good point and abandon that point so that their time is not wasted and the court's time is not wasted and where they feel they have an answer to her points to set out those answers in a responding skeleton argument. It seems to me taking all the factors together including the fact that Miss Harrison is now resident in the jurisdiction and that this is the first time the case is actually in for trial, though a listing date had been given before but it was withdrawn some weeks before trial, that the just thing to do is to take the matter out of the list and allow Miss Harrison to reflect on the report and prepare to cross-examine Mr Dwyer in relation to it. If possible obviously she should get accountancy persons to assist her with that, or to be called on her behalf, but I cannot direct that but that would be obviously be sensible in the circumstances. The plaintiffs must be liable for the costs thrown away and are liable irrespective of the outcome of the

case. I have consulted the commercial list and I see there is a gap in it for the 15th February; there is not thereafter a gap for a considerable period of time (nor any gap in my own Chancery list until September), so unless somebody strongly objected that is when I propose to re-list the matter.