Neutral Citation No. [2013] NIQB 97

Ref: **GIL8905**

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

Delivered: **03/07/2013**

IN THE HIGH OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

KEVIN O'NEILL, KAREN O'NEILL, CIARA O'NEILL, SHELLEY O'NEILL AND JORDAN O'NEILL

Plaintiffs;

and

GRAHAM TOMLINSON AND ELLA TOMLINSON

Defendants.

GILLEN J

Introduction

[1] This is an appeal from the decision of Deputy County Court Judge Gilpin on 25 March 2013 when he awarded £7,500 in respect of general damages to the plaintiffs arising from an escape of oil from the defendants' property onto the plaintiffs' property which occurred in or about December 2008.

[2] The plaintiffs' claim relied on negligence and nuisance of the defendants in and about the escape of oil from the defendants' property.

[3] Only one witness gave evidence in this case namely Karen O'Neill. She gave evidence to the following effect:

- She lived at 75 Parklands, Antrim with her husband and three children.
- After Christmas 2008 she noticed a strong odour in her property throughout the day which became stronger and stronger as the weeks went on.
- She discovered that this was caused by the escape of oil from an oil tank on the property of the defendants at 76 Parklands.

- Initially she and her family had suffered headaches, stuffy noses and a general feeling of being unwell which she initially ascribed to a virus or winter bug.
- Remedial works included inserting a fan to remove the smell (which was unsuccessful), substantial works to her garden (removal of the earthworks 4-5 feet deep) and work into the side of the house.
- The result was that she was unable to use her back garden at all, no washing could be left out, the car in their garage was unable to be used, and she could only gain access to her own home by the front door.
- Their pets namely a dog and a bird had to be transferred.
- The smell was constantly there. The works, which took approximately 8 months in total, caused dirt to be transferred from shoes into the home and a smell on their clothes/bed linen continued throughout the period.
- Constant noise of the works.

[4] The plaintiff was a housewife and lived in the house during the entirety of this period. Her oldest child was at university in Liverpool at that stage but did return home in the period December/January 2008/2009 and again at Easter and May. Another child was working and was at home each day. The youngest child was at school at the time.

[5] It was put to her in evidence that the rental value of her property was approximately £535 per month (by virtue of comparison with a similar property) and her rates were approximately £800 per annum.

Liability

[6] Liability was not an issue in this case and my sole role was to assess the value of the inconvenience and distress caused to the family. It was a common approach throughout the original hearing and at this court that one figure would be awarded to the family as a whole.

Principles of law governing this application

[7] Beyond physical and other damage to land leading to pecuniary loss, a nuisance may cause annoyance, inconvenience, discomfort or even illness to the claimant occupier. Recovery in respect of these principally non-pecuniary losses is allowable and may be regarded as part of the normal measure of damages.

[8] The approach of the courts to the question of general damages for such irritation, distress and worry is to provide compensation which is "not excessive, but modest" and which "may not be very substantial" per Lord Denning MR and Oliver LJ in Perry v Sidney Phillips [1982] 3 All ER 705.

[9] In Watts v Morrow [1991] 1 WLR 1421 Bingham LJ said that general damages were recoverable but were limited, generally, to damages for physical inconvenience, discomfort and mental suffering directly related to that. (See also Eiles v Southwark London Borough Council [2006] EWHC 1411.

[10] The starting point must be the basic principle that the purpose of an award of damages is, so far as possible by an award of money, to place the innocent party in the position they would have been in if they had not suffered the wrong of which complaint has been made.

[11] Counsel has drawn my attention to some of the different approaches that have been adopted by courts in arriving at an appropriate figure for such loss. These include:

- McGawley, Campbell & Shannon (t/a Bernard Campbell & Co Solicitors) v Multi Development UK Ltd [2010] NIQB 82 where the conduct of construction work inconvenienced a firm of solicitors and disrupted their use and enjoyment of their business premises.
- Barr v Biffa Waste Services Ltd [2011] EWHC 1003 concerning a claim of nuisance by 140 households arising from smell from a pre-treated waste unit on the defendant's landfill site. If any of the claimants in that case had been able to recover general damages for the odour which was emitted the compensation would have been limited to £1,000 per year for each year when the threshold odour was exceeded. (See (584)).
- In Julie Wallace & Ors v Manchester City Council [1998] All ER (D) 322 where deficiencies to structure and exterior of a dwelling over a number of years had caused distress, anxiety and inconvenience to a mother and her two small children. The court lent its imprimatur to a suggestion by counsel that a review of the authorities established that an "unofficial tariff of damages for discomfort and inconvenience of £2,750 per annum at the top to £1,000 per annum at the bottom" was a normal approach.
- In Duddy & Duddy v Wiley & Ors (Unreported CARF1069) Carswell J awarded £7,500 for inconvenience and distress for a period of 4½ years during which the plaintiffs had been kept out of their house, had to live in a smaller house with in-laws, and had to arrange for contractors to work at the original house with supervision.

Conclusions

[12] The object of awarding damages against someone such as the defendants for the nuisance they have caused is not to punish them but so far as money can to restore the plaintiffs to the position they would have been in had there been no

breach. In terms they must be compensated for the unpleasantness of living in this house during the period it took to repair the defects in the oil leak.

[13] I do not believe that every case of this nature can be measured by reference to rental or rates valuation. These plaintiffs regard this house as their home, not a saleable or rental asset. In my view it would be unacceptable to leave the real world for the complicated world of expert evidence on comparable rentals and values on the fictitious assumption that the rental value of the house has anything to do with its value to her or her family. (See Stephenson LJ in Calabar Properties Ltd v Stitcher [1984] 1 WLR 287 at 293).

[14] Each case depends upon its own circumstances and I believe the emphasis should be on a sum to compensate for the discomfort, loss of enjoyment and health involved in living in these conditions. The assessment of the amount of money necessary to compensate this family is a matter for the judge and not for expert evidence as to rental values. For periods when a tenant remains in occupation of the property compensation is for the loss of comfort and convenience which results from living in a property which is not in the condition it ought to have been if the defendant had not created the nuisance. That is not to say that a sum for compensation may not be ascertained in a number of different ways including in appropriate cases a notional reduction in the rental value. Some judges may use that method alone, some may prefer a global award for discomfort and inconvenience and others may prefer a mixture of the two.

[15] In the present case I have decided to confine myself solely to evaluating the monetary value of the discomfort and inconvenience suffered by this family. I note that there was no medical evidence to suggest any personal injury or psychiatric damage. I also remind myself that the authorities make it clear that damages for discomfort and inconvenience have conventionally been modest.

[16]Whilst recognising that there were five plaintiffs in this case, I observe that one of them was at university most of the time and three of them were out of the house either at school or work for a substantial part of the day. In all the circumstances I have come to the conclusion that the figure of £7,500 awarded by the County Court Judge was too high and I have therefore reduced it to £5,500. Costs will follow the event of this reversal.