

1522

THE HIGH COURT

1980 No. 10398P

BETWEEN/

MESPIL LIMITED

Plaintiffs

-and-

FRANCIS CAPALDI  
PHILIP CAPALDI  
AND ELIZABETH BOWES

Defendants

AND:

1980 No. 10399P

BETWEEN/

ARAMAIC LIMITED

Plaintiffs

-and-

FRANCIS CAPALDI  
PHILIP CAPALDI  
AND ELIZABETH BOWES

Defendants

Judgment of Mr. Justice O'Hanlon delivered the 10th day of  
February, 1984.

The two above-entitled sets of proceedings have been dealt with together at all stages. The same Defendants feature in both actions, and the Plaintiffs are limited

companies with common Directors and Shareholders. In the first action possession is sought of premises at No. 5 Clare Lane, in the City of Dublin, together with arrears of rent and mesne rates, and in the second action possession is sought of part of the premises known as Nos. 27 and 28 Clare Street, in the City of Dublin, together with a further claim for rent arrears and mesne rates.

When the actions came on for hearing in the month of June, 1983, some preliminary discussions took place between Counsel with a view to settlement. Various matters were touched upon in the course of these discussions, but they were principally concerned with the claim for arrears of rent - a figure in the region of £20,000 being suggested by Counsel for the Defendants and a figure in the region of £40,000 being suggested by Counsel for the Plaintiffs.

A composite settlement of both sets of proceedings was envisaged by both parties, and the negotiations proceeded on this basis. Reference was made in the course of these discussions to other matters which had caused concern to the lessors. Another limited company, Estates Management

and Development Agency Limited, which was associated with Aramaic Limited and Mespil Limited, has been involved in a proposal made in the year 1973 to buy out the interest of the Defendants in the said two premises at Clare Street, and the Defendants claimed to be entitled to forfeit a deposit of £10,000 paid to them on that occasion. The Plaintiffs in the ejectment proceedings were dissatisfied about this development, and also about other matters connected with the user of the demised premises by the Defendants. I am satisfied on the evidence in the present case that these matters were mentioned by Counsel for the Plaintiffs in the course of the discussions about the possibility of settling the proceedings which were listed for hearing on the 15th June, 1983.

Eventually, agreement was reached on a settlement figure and on other terms of settlement, and a Memorandum was written out by Counsel for the Defendants. I have the impression that the first draft read as follows:-

"Full and final settlement of all matters and acts in dispute between the parties:-

1525

- (1) Payment of £31,000 by Defendants to Plaintiffs payable as to £10,000 on Friday 17/6/83 balance of £21,000 on Friday 15/7/83.
- (2) Adjourned to 15th July, 1983 for Mention."

This was not completely acceptable to Counsel for the Plaintiffs, and on his suggestion the Memorandum was expanded by Counsel for the Defendants, so that, in its final form, it read as follows:-

"Full and final settlement of all matters and acts in dispute between the parties in these proceedings:-

- (1) Payment of £31,000 by Defendants to Plaintiffs payable as to £10,000 on Friday 17/6/83 balance of £21,000 on Friday 15/7/83.
- (2) Adjourned to 15th July 1983 for Mention.  
If all monies paid Dismiss.  
If all monies not paid: on respective dates.
  - (a) Order for possession
  - (b) Balance of monies outstanding Decree being damages for breach of covenant."

The Memorandum in that form was signed by both Counsel and dated, 15th June, 1983.

The sum of £10,000 was paid by the Defendants to the Plaintiffs on the 17th June, 1983. The next development was that the Plaintiffs Aramaic Limited served Notice of determination of Lease dated 23rd June, 1983 on the Defendants,

in respect of the said premises at Nos. 27 and 28 Clare Street, Dublin, in reliance upon alleged breach of covenant by the lessees, having reference apparently, to their past user of the premises, and proceedings were commenced by Estate Management and Development Agency Limited against the Defendants to enforce the Agreement made in 1973 for the acquisition of the Defendants' interest in the said premises.

The Defendants took the view that all these matters had been disposed of by means of the Settlement concluded on the 15th June, 1983, and that it was a breach of the Plaintiffs' obligations under that agreement to re-open these disputes. Acting upon this belief, they withheld payment of the sum of £21,000 which they had agreed to pay on Friday, 15th July, 1983, and that sum has never since been paid.

The Plaintiffs now move the Court to give effect to the terms of the settlement negotiated on the 15th June, 1983, by making an Order for possession of both sets of premises against the Defendants, and the Defendants counter by saying that there has been a fundamental breach of the terms of settlement by the



Plaintiffs which has deprived them of the right to enforce the remaining terms in their own favour.

To determine the outcome of this application it is necessary to decide what was meant by the agreement concluded on the 15th June, 1983 and the Counsel who were acting for the parties on the said occasion were called as witnesses to say what they had in mind when signing the Memorandum on behalf of their respective clients.

The document itself seems clear enough to me. The incorporation in it of the clause, "in these proceedings", appears to me to confine the terms of settlement to the claims which were being litigated between the parties at that time and I cannot construe the document as precluding or inhibiting either the Plaintiffs or Estate Management and Development Agency Limited from raising subsequently against the Defendants the claims which were brought forward shortly after the ejection proceedings had been settled.

I am quite prepared to accept the evidence of Counsel who acted for the Defendants at that time, that he believed he was getting agreement to the withdrawal of all claims against

his clients up to that date, including any claim that the covenant as to user had been breached, or that they had wrongfully forfeited the deposit paid to them some years ago by an associated company. I also accept that this view of the effect of the agreement was not shared by Counsel for the Plaintiffs, so there was an element of mutual mistake involved in the transaction.

This, however, is not, in my opinion, sufficient to vitiate the agreement in the circumstances of the present case. I am of opinion that the parties, through their Counsel, concluded an agreement for settlement of the actions which were before the High Court on the 15th June, 1983, and that both sides intended that all the terms of agreement should be incorporated in the written memorandum which was signed by Counsel on that date. There is, therefore, no scope for urging, as Mr. Kenny did on behalf of the Defendants, that this could be regarded as one of those situations where a collateral oral agreement existed side by side with a written agreement which did not contain all the terms agreed between the parties. That being so, the written

agreement, is in my opinion, binding upon the parties according to its express terms, unless those terms are ambiguous and uncertain. I do not consider that this short and simple memorandum is vitiated by ambiguity or uncertainty.

In this situation, although one party to the agreement may say that it does not express what he intended, I am of opinion that both parties remain bound by the terms of the written document.

Blackburn J. said in Smith v Hughes, (1871) LR 6 QB 597, at p. 607:

"If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms."

Pollock CB said in Cornish v Abington, (1859), 4 H. & No. 549, at p. 556:

"If any person, by a course of conduct or by actual expressions, so conducts himself that another may reasonably infer the existence of an agreement .... whether the party intends that he should do so or not, it has the effect that the party using that language or who has so conducted himself, cannot afterwards gainsay the reasonable inference to be drawn from his words or conduct."

In Blay v Pollard and Morris, (1930) 1 KB 628, where one party signed an agreement for dissolution of a



partnership without realising that it bound him to indemnify the other partner in respect of past arrears of rent, he was held by the Court of Appeal in England to be bound by the terms of the written document even though the oral agreement reached between the parties only related to future rent.

Scrutton LJ said:

"As a general rule, mistake as to the legal effect of what one is signing, when one has read the document, does not avail: see per Romilly, MR, in Powell v Smith. It would be very dangerous to allow a man over the age of legal infancy to escape from the legal effect of a document he has, after reading it, signed, in the absence of an express misrepresentation by the other party of that legal effect."

Having regard to these legal principles, I have come to the conclusion that the Defendants are bound by the terms of the settlement which were reduced to writing and signed by Counsel on the 15th June, 1983; that the settlement related only to the matters being litigated in the proceedings then before the Court; that the Defendants were bound to make the second payment of £21,000 on the 15th July 1973, and that as they failed to do so the Plaintiffs are entitled to an Order for possession of the premises referred to in both sets of proceedings. With reference to Mr. Kenny's last line

of defence, that the Court should grant relief against forfeiture in exercise of its equitable jurisdiction, I do not consider that the situation is one where that jurisdiction can be exercised, and if it were I should be unwilling to do so. There will, accordingly, be a decree for possession against the Defendants in respect of the premises referred to in both sets of proceedings, together with judgment for the sum of £21,000 as damages for breach of covenant as agreed in the terms of settlement.

*A. J. O'Hanlon*  
 13/3/84.

NOTE

Counsel for the Plaintiffs:- Nial Fennelly SC; with him  
Brian Leonard BL (instructed  
by Rory L. Egan & Co.,  
Solicitors).

Counsel for the Defendants:- Roger Kenny BL (instructed by  
Donal T. McAuliffe & Co.,  
Solicitors).

Cases and other materials referred to:-

- Halsbury, Laws of England, 4th edn., Vol.9 pp 515/516
- Taylor v Webb, (1937) 2 KB
- Swinfen v Swinfen, 18 CB (1856) 503
- ..... 5 H. & N. (1861) 890
- Gordon v Gordon, (1951) IR 301
- Gettling v Cloney, 48 LLTR 55
- Phipson on Evidence, p.940, Par. 38(12)

