

THE HIGH COURT

[2017 No. 252 S.P.]

BETWEEN

DAVID DULLY

PLAINTIFF

AND

ATHLONE TOWN STADIUM LIMITED, DECLAN MOLLOY, KEIRAN TEMPLE AND PADDY
MCCAUL

DEFENDANTS

AND

THE FOOTBALL ASSOCIATION OF IRELAND

NOTICE PARTY

(NO. 7)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of November, 2019

1. This is the latest instalment in a long-running dispute in relation to the ownership of Athlone Town Stadium, which rested with my judgment in *Dully v. Athlone Town Stadium Ltd (No. 6)* (Unreported, High Court 15th October, 2019) when the first-named defendant's motion to set aside the most recent substantive order in the proceedings was before the court. I have now received further submissions from Mr. Kieran Collins B.L. for the plaintiff, from Mr. Michael Forde S.C. (with Mr. Laurence Masterson B.L.) for the first-named defendant, from Mr. Molloy, the second-named defendant, in person, and from Mr. Cormac Ó Dúlacháin S.C. for the fourth-named defendant. The third-named defendant was called and did not appear; and the notice party has not been actively involved in the proceedings.
2. The first matter before the court at this stage of the proceedings was an application by Mr. Ó Dúlacháin to come off record for the third-named defendant, set out in a motion dated 3rd November, 2019 and grounded on affidavits of his instructing solicitor Mr. Colm MacGeehin on 29th October, 2019 and of the fourth-named defendant on 30th October, 2019. I also received oral evidence of service from Mr. MacGeehin. On the basis of that evidence, I granted the order that Prospect Law Solicitors have ceased to act for the third named defendant.
3. Returning to Mr. Forde's motion dated 13th September, 2019 to vacate the order of the court of 23rd May, 2019 and seeking related reliefs, which was partly addressed in *Dully v. Athlone Town Stadium Ltd (No. 6)*, Mr. Forde's latest application was to disallow the affidavit of the fourth-named defendant, sworn on 30th October, 2019 and filed on 31st October, 2019, initially on two grounds: firstly, that it should have been filed by the solicitors for the first-named defendant rather than the fourth-named defendant and secondly, on the grounds that it was delivered late, although Mr. Forde then withdrew that objection having received an explanation for the delay, which was essentially that the computer system in the fourth-named defendant's solicitors was not functioning on 30th October, 2019 so the affidavit could not be emailed; and it was posted on 31st October, 2019, but clearly did not arrive on time.

4. As regards the objection that the wrong solicitor has filed the affidavit, Mr. Forde says that the second-named defendant has no dispute with the fourth-named defendant, only with the plaintiff, and that any affidavit of the fourth-named defendant consequently should not be filed on his own behalf. However, that is a point that does not stand up to consideration. The fourth-named defendant is clearly an affected party who has personal obligations under the settlement agreement and against whom relief was sought, giving rise to the settlement or purported settlement. Thus, the application seeking that relief was the basis on which he was made a defendant in the first place, so clearly he is entitled to all the rights going with that.
5. Accordingly, the primary order will be:
 - (i). that Prospect Law Solicitors have ceased to act for the third-named defendant;
 - (ii). that the fourth-named defendant may rely on his affidavit, filed on 31st October, 2019;
 - (iii). that the first-named defendant, who is the moving party in the present motion, be directed to ensure that the third-named defendant is informed in writing of the adjourned hearing date in advance.
6. Mr. Forde launched a hearsay objection to para. 11 of Mr. McCaul's affidavit, which appears to rely on information received from his solicitor Mr. MacGeehin. Whether this paragraph is admissible or not is perhaps an interesting legal question but the matter is probably better addressed in a more practical sense by Mr. MacGeehin putting in an affidavit of a non-hearsay nature so I give him liberty to do that by 11th November, 2019. The first-named defendant can then reply to the fourth-named defendant's evidence by 18th November, 2019 and is to deliver an outline submission by that date; "outline" in the sense that there is likely to be some oral evidence on the day so the submission does not have to anticipate matters that may be dealt with in the course of cross-examination. Any affidavit of Mr. Temple, if he wants to get involved, is also to be filed by 18th November, 2019 and that the first-named defendant's solicitor, Mr. McNelis, is to notify him of that deadline. Mr. McNelis has also helpfully agreed to prepare an updated book of pleadings for the court. The fourth-named defendant is to deliver an outline submission by 25th November, 2019 and the matter is to be listed for hearing on 29th November, 2019 with all deponents in relation to the present motion to be available on that date for cross-examination (other than the plaintiff personally as Mr. Forde does not require him for cross-examination on his affidavit of 25th October, 2019). Mr. Forde also applied for costs of the adjourned proceedings but is happy to have that dealt with in due course rather than immediately so I will adjourn that application until the conclusion of the motion.