

*Unapproved  
No redactions required*



**THE COURT OF APPEAL**

**CIVIL**

**Appeal Number: 2018/305**

**Neutral Citation No [2022] IECA 50**

**Whelan J.**

**Collins J.**

**Pilkington J.**

**BETWEEN**

**THOMAS CONDRON**

*Plaintiff/Respondent*

**AND**

**GALWAY HOLDING COMPANY LIMITED AND DANMAR CONSTRUCTION**

**LIMITED AND STEPHEN TREACY AND MAUREEN TREACY**

*Defendants/Appellants*

**Judgment of Mr Justice Maurice Collins delivered on 2 March 2022**

1. I agree with the judgment of Whelan J and with the order she proposes.

2. I do so in the very particular circumstances presented here.
  
3. The High Court Judge thought it “*difficult to criticise the plaintiff for initiating these proceedings in the High Court*” given the uncertainty as to whether the Circuit Court had jurisdiction. I share that view. In her judgment, Whelan J has set out in detail how this issue arose and how it was not until the Supreme Court’s decision in *Permanent TSB plc v Langan* [2017] IESC 71, [2018] 1 IR 375 that that uncertainty was resolved. As she explains, by the time of the Supreme Court’s decision, the High Court hearing in this case had concluded. In the circumstances, it would seem harsh indeed to assess the application of section 17(1) of the Courts Act 1981 (as amended) with the 20:20 hindsight that *Langan* permits.
  
4. It is also relevant, in my view, that the Defendants appear never to have objected to the Plaintiff proceeding in the High Court. They did not bring an application to remit the proceedings to the Circuit Court. It may be that, in the ordinary way, that will be a neutral factor and, as Whelan J suggests, that appears to have been the view taken by Dunne J in *Meath County Council v Rooney* [2009] IEHC 564. But even if that is so, the fact is that it was at all times open to the Defendants here to assert that the Circuit Court was the appropriate jurisdiction in which to proceed and they could have offered to consent to that court’s jurisdiction to deal with the proceedings in order to allay any *Langan*-related concerns. They did not do so and remained silent and, in the circumstances, their silence might well be characterised as acquiescence in the Plaintiff’s decision to proceed in the High Court.

5. In fact, there was significantly more than acquiescence by silence. As Whelan J explains, the Defendants in fact brought a counterclaim which included a claim for damages in an amount in excess of the jurisdiction of the Circuit Court. That is a particularly significant factor in my view and involved a clear representation by the Defendants that they accepted and adopted the jurisdiction of the High Court.
  
6. The decision of the Supreme Court in *Murphy v Grealish* [2009] 3 IR 366, and the authorities referred to in it, clearly establish the principle that a party may be estopped by their conduct from relying on an otherwise applicable statutory provision – in that case, the provisions of the Statute of Limitations. In the particular circumstances here, I consider that the Defendants are estopped by their conduct from relying on section 17(1) against the Plaintiff and I agree with Whelan J that it would be unconscionable to permit them to do so.

*Whelan and Pilkington JJ have authorised me to record their agreement with this judgment.*