Limitation Periods and Investment Schemes

Cantrell v AIB Plc and others [2017] IEHC 254

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The High Court in *Cantrell* has recently determined a number of preliminary issues involving the circumstances that will bar a plaintiff's claim under the Statute of Limitations. These, and other related sets of proceedings, were stated to be "*pathway cases*" seeking damages against a number of defendants. In this case the court was asked to determine when time limits started to run for claims involving breach of contract and negligence arising from property investment schemes ("PIS").

Facts

These proceedings involved a number of plaintiffs who had invested in various PIS. The plaintiffs' monies were pooled together with monies from other investors for investment in various properties. Each plaintiff was attracted to this opportunity by a prospectus issued by the defendants. The prospectus stated that the directors would accept responsibility for the information contained in it by taking reasonable care to ensure the legitimacy of the information and would ensure that nothing that would affect the accuracy of this information was omitted. The prospectus further advised that the investment was structured as a medium to long term investment and that some evaluation of risk would be undertaken.

This investment was to be geared but the prospectus did not state at what level this investment was to be geared at. The debt was acquired with a loan to value (LTV) covenant which meant that if the property value fell below 80% of the purchase price it would cause the floating charge over the asset in question to crystallise and the investment scheme would lose the asset to the borrower.

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The plaintiffs all claimed to have received no notice of the LTV covenant until they received a letter from the defendants when the property value had fallen below 80% in 2008. The majority of plaintiffs brought a number of claims seeking damages for breach of contract, negligence and misrepresentation in 2014.

Limitation Period Issues

The question arose for the court to determine when the cause of action accrued; was it at the time of entering into the contract or when the damage occurred, and had these actions been commenced before the expiry of the 6 year time limit provided for in the Statute of Limitations.

Tort

Haughton J. relied upon guidelines established in *Hegarty v O'Loughran* [1990] 1 IR 148 in which it was found that in financial loss cases a time limitation can only begin when the tort is complete. This is based on the individual facts of each case but requires all the elements of a tort including damage to have occurred. Therefore claims for negligence and breach of fiduciary duty will only have a limitation period beginning when the actual damage occurred.

Assuming that actionable wrong occurred when the investments were entered into, the cause of action in tort did not accrue at the date of entry into the investments as there was a mere possibility of loss but no actual loss and the LTV covenant made no difference to this.

With regard to negligent misstatement the timeline was again dependent upon when the damage occurred. In this case it was deemed to be the date on which audited accounts for the company were signed off by the directors as they demonstrated actual loss in shareholder value.

LTV Covenant Claims

Only when the value of shareholder investments in each fund were written down to nil was there provable actual loss in the context of the plaintiffs' pleaded claims of negligence/negligent misstatement/misrepresentation related to the LTV covenants and the cause of action accrued from that date.

Breach of Contract

With regards to the breach of contract claim the court held that the time accrued from when the plaintiffs entered into the contract which in this case was in excess of 6 years from the commencement of proceedings being instituted and the claims were therefore statute barred.

Comment

While this case sets the parameters as a "pathway case" for the other claims arising from this PIS it also highlights the circumstances and factors that a court will consider, incuding a focus on the date of accrual of wrong, and the occurance of the wrong, when considering if a claim is statute barred.

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