Neutral Citation: [2014] IEHC 646

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 606 J.R.]

BETWEEN

MARK MCDONOUGH AND CAROLINE MCDONOUGH

APPLICANTS

AND

IRISH WATER

RESPONDENT

JUDGMENT of Ms. Justice Baker delivered on the 17th day of December, 2014

1. This judicial review relates to water and waste water charges levied by Meath County Council against the operators of a private caravan park at Bettystown Co Meath. The proceedings were commenced against Meath County Council, but following the coming into force on 1st January, 2014 of the Water Services Acts 2007 to 2013, the functions and powers of the local sanitary authority have been taken over by Irish Water, which has now been substituted as defendant pursuant to s. 15(2) of the Act of 2013. The case involves the interpretation of s. 65A of the Public Health (Ireland) Act 1878, as amended, and the extent of the exemption from water charges found in the legislation. The applicants claim that the respondent was not entitled to levy water charges in respect of the units at the caravan park as the water is supplied for domestic purposes and exempt from charges. The respondent says that as the water is supplied to the first applicant who conducts the business of caravan parks, the supply is for commercial purposes and not exempt from charges.

2. The matter has progressed by modular trial and this part of the action concerns the interpretation of the exemptions in the legislative scheme, and whether the applicants are entitled to the benefit of the legislative exemption from water charges. In this judgment, except where the context suggests otherwise, I use the expression "water charges" to refer to charges for the supply of water and the disposal of waste water or sewage.

Facts

3. Bettystown Caravan Park is situate on the lands comprised in Folio MH6550 of which the registered owner is Liam McDonough, the deceased father of the applicants. There are positioned on the site 270 units of a type of caravan colloquially known as a mobile home. The evidence before me is that the units are not in any real sense mobile, that they are permanent to semi-permanent structures, that they do not have wheels and that it is very difficult and cumbersome to move them as heavy machinery is required. I have seen photographs of sample types of units on the site, and it would be fair to say that some of them resemble chalet type units surrounded by picket fences, in many cases having decking or similar paving and small gardens.

4. Many of the units are occupied as holiday homes, but one hundred and ten people live permanently in the park, ten of whom are children who go to school locally. Each of the units has a separate postal address and some of the residents have lived in the units for many years.

5. The caravan park is serviced with water, sewage disposal, electricity and other services commonly found in domestic or commercial premises, and two services are of particular note. The units had at the relevant times the benefit of mains water which was supplied by Meath County Council. The supply was brought to the entrance on the southern side of the site from where it was transmitted through conduits to the individual units. The units are also serviced by a public sewer which is situate outside the site on the north eastern corner, and the waste water is discharged into conduits on the site which feed into the public sewer at that point. Manholes are clearly visible on the ground and have been identified to me in the course of the hearing.

6. The owners of the units pay an annual licence fee to the park operator calculated at the beginning of every year, the fee being for the use of the site on which their individual unit is situate. The physical property in the units themselves is owned by the individual occupiers, and the licence fee is paid in consideration of an exclusive right to position a unit on an identified part of the park lands. The licence is created orally, but rules and regulations are made annually in a circular or letter sent to the individual owners identifying in any particular year the amount of the service charge, and the rules and requirements for the proper regulation of the caravan park.

7. The annual licence fee was for at the last identified year the sum of €2,600 plus VAT, and individual home owners are charged separately for electricity, but not for water or waste water disposal.

8. The park regulations, which do not take the form of covenants, include rules and regulations regarding the keeping of animals, the proper management of the pipes during winter months when some of the units are unoccupied, the proper maintenance of the parking areas *etc*. Of note is the fact that there is prohibited any subletting or other parting with possession of the unit, whether on a long or short term basis. Of note is also the fact that there is an express prohibition on the sale of a unit except through the managers or owners of the park, and what is envisaged is that a person may remove the unit entirely from a site, but if he or she wishes to dispose of the unit *in situ* the sale, with the benefit of the licence to occupy an identified site, can be done only through the park owners. There was no argument canvassed before me that the relationship of landlord and tenant exists between the park operators and the individual owners of mobile homes.

9. Having regard to the express prohibition on any class of subletting or parting with possession, it is clear that the intended use of the individual units is as either permanent or holiday homes for the owners who may not rent the units to tenants, whether on a short or long term basis. The caravan park is not operated as a commercial caravan park where holiday makers take a short term rental, whether from the owners of the units or the owners of the sites.

10. Another relevant factor is that the caravan park site has no commercial facilities and does not have, for example, a laundry, restaurant, gym or any other facilities that one might find in a holiday caravan park.

11. It can fairly be said that the units are used for domestic purposes by their owners, and there is no commercial element in their use.

The basis of the proceedings
12. The first named applicant manages the caravan park and has been in receipt of invoices in respect of water charges since 2003 or thereabouts. The charges have increased exponentially in the last few years, and as an example of this, the charges from April 2008 to September 2008, amounted to €57,284.30, the charges from September 2009 to September 2010 amounted to €37,456.70. The account fell into arrears from time to time, and arrangements were made for the discharge of the arrears by monthly instalments. As of February 2014 current arrears stood at €133,324.25. Since December 2012, the park has become self-sufficient in the supply of fresh water following the sinking of a private well. The park still requires the use of waste water sewage facilities and continues to be invoiced for this service.

Standing
13. The statement of grounds for the application for judicial review described the applicants as "administrators" of the park, and from the affidavit evidence it is clear that the first named applicant was the personal representative in the estate of the deceased registered owner but his Grant was limited to the incapacity of his mother who died in 2008. Both applicants and their sister are the personal representatives in the estate of their late mother, and letters of administration intestate issued to them in 2008. The description of the applicants as "administrators" is somewhat obscure, and perhaps inaccurate, and some discussion was had as to whether the applicants were properly before the court. Counsel on behalf of the respondent has accepted that there was sufficient evidence before me to allow me to take the view that the applicants have "sufficient interest" in the matters to give them standing to bring this judicial review, but it was said in that context that the question of the entitlement of the applicants to seek damages might well depend on their status as personal representatives in the estate of either the registered owner or his deceased wife.

14. Having regard to the possibility that different arguments as to standing might arise in regard to the damages claim, counsel for both parties agreed, and I accepted, that the trial would proceed as a modular trial, that I would first hear the question of the interpretation of the legislation and determine the application for declaratory relief, and consequent upon that I would, if appropriate, enter upon a hearing of the damages claim which in essence is a claim by the first applicant for a refund of the monies paid by him.

Delay
15. The first matter of substance before me is whether the applicants are out of time and the respondent argues, *inter alia*, that as the last invoice raised against Mr. McDonough was in September 2012, he is out of time for bringing an application to quash that invoice, the six month time limit for the making of an order of certiorari or for the making of declaratory relief having expired. Counsel for the applicants urge upon me the proposition that the event which triggered the entitlement to seek judicial review was the service by the local authority of a disconnect notice on 13th May, 2013, the date at which the applicant came into jeopardy that the service would be discontinued. I accept this argument and time could begin to run in respect of each and every invoice and disconnect notice as the case may be, and in this I adopt the reasoning of Hogan J. in *Duffy v Laois County Council* 2014 I.E.H.C. 469 and hold that there was an accrual of a fresh cause of action on the issue of each disconnect notice or invoice.

16. I was referred to the considerable correspondence that occurred after the service of the disconnect notice, immediately upon the receipt of which Mr. McDonough sought legal advice and his solicitor engaged in correspondence with the County Council. Throughout this correspondence, the respondent sought to persuade the applicants' solicitors not to move for injunctive relief or for judicial review, and expressly gave an undertaking at that stage that the water would not be disconnected. In some of this correspondence, the solicitor for the local authority suggests that in those circumstances there was no order that the applicants might seek to challenge, and I consider that this suggestion in correspondence is inconsistent with what is now sought to be argued by the respondent, namely that the applicants are out of time. The question of time might well be relevant to the issue of the recovery of damages in the form of the refund of payments already made but is not, in my view, determinative of the issue whether the applicants are out of time for the bringing of an application for declaratory relief in respect of the disconnection notice and for a declaration as to the true interpretation of the statutory provisions. If on a true construction of the application the review is in essence a review of the invoice, I consider that the time for bringing review should be extended.

17. The first point I consider relevant in this regard is that the applicants challenge a disconnect notice that served on 13th May, 2013, and this is when in essence the supply of the relevant service by the sanitary authority came to be in jeopardy. The case law is clear that I must have regard to the reason for the delay in commencing this judicial review within the time limit thereafter, and I am persuaded by the argument that the delay thereafter was caused and to a very large extent contributed to by the correspondence entered into between the solicitors for the parties. I consider that this correspondence was fulsome and frank on the part of both parties and it was clear that it was hoped the matter would resolve. Further, and this is critical to my conclusion, the proposition that the applicants are now out of time does not sit comfortably with the proposition clearly stated in the correspondence from the solicitor for the respondent that there was no purpose to be served by instituting review as the it was agreed not to activate the disconnect notice. I consider that the applicants were lulled into a false sense of security by this correspondence and that it would not be a proper exercise of my discretion to refuse to extend the time for the bringing of judicial review, and to borrow from the law of private estoppel, the respondents led the applicants by the correspondence to believe that a time point would not be taken and that belief led the applicants to delay unduly in seeking relief. I am fortified in this view by the judgment in *Murphy v Wallace* [1993] 2 I.R. 138 where Barron J. held that the circumstances were a justification for the delay which occurred, and that the applicant was justified in waiting for a decision by the prosecution as to how they would continue before taking any steps by way of seeking judicial review.

18. Equally in this case the applicants were entitled to and did in fact rely on the undertakings given on behalf of the respondent that the water would not be disconnected and they would arguably have been met by precisely the opposite argument than that made here had they gone for review sooner.

19. I hold then that the applicants are not out of time and that the first applicant has a sufficient interest in the matters now before me, namely the true interpretation of the statute and the legality of the disconnection notice to raise the matters raised in this module of the trial.

20. Different legislative provisions apply in regard to charges for the supply of water, and for the disposal of waste water and the judgment will consider each in turn.

Historical context: the supply of water

21. Section 53 of the Waterworks Clauses Act 1847 permits the owner and occupier of a dwelling house, subject to certain identified preconditions, to demand and receive "*a sufficient supply of water for his domestic purposes*". Since the enactment of the Public Health (Ireland) Act 1878, local sanitary authorities were the managers of the supply of water in their functional areas, and s. 61 of that Act gives an express power to a sanitary authority to supply water for public and private purposes. That section provides as follows:-

> *"Any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes…".*

22. The function of the individual urban or sanitary authorities has been taken over since 1st January, 2014 on a national basis by Irish Water following the enactment of the Water Services Act 2013.

23. The power to impose a charge for the supply of water is contained in s. 65 of the Act of 1878, as subsequently amended. The relevant amendment was made by insertion of a new section 65A by s. 7 of the Local Government (Sanitary Services) Act 1962:

> *"65A. (1) A sanitary authority may make charges for water supplied by them, but an urban sanitary authority shall not make a charge for a supply of water for domestic purposes supplied within their district except where the supply constitutes the whole or part of—*
>
> *a) a supply to any premises which are used wholly or in part for any business, trade or manufacture,*
>
> *b) a supply to any hospital, sanatorium, county home, home for persons suffering from physical or mental disability, maternity home, convalescent home, preventorium, laboratory, clinic, health centre, dispensary or any similar institution, or*
>
> *c) a supply to any club."*

24. The general power to charge for the provision of water services is contained in s. 2 of the Local Government (Financial Provisions) (No. 2) Act 1983.

> *"2.—(1) Subject to section 4 of this Act, any existing enactment which requires or enables a local authority to provide a service but which, apart from this subsection, does not empower the authority to charge for the provision of the service shall be deemed so to empower that authority."*

25. The charging provision was later replaced and s. 12 of the Local Government (Financial Provisions) Act 1997 removed with effect from the 31st December, 1996, the right of a sanitary authority to charge for the supply of water for domestic purposes and substituted a new 65A (1) and (1A). The relevant exemption is found in the amended s. 65A of the Act of 1878, which provides as follows:-

> *"65A. (1) A sanitary authority may make charges for water supplied, whether within or outside their functional area, by them, but after the 31st day of December, 1996, a sanitary authority may not make a charge for a supply by them of water for domestic purposes."*

26. Except where this exemption applies the amount of the charge may be fixed by reference to the matters identified as follows:

> *"(2) A charge under this section may be fixed from time to time by reference to any one or more of the following:*
>
> *a) the quantity of water supplied,*
>
> *b) the rateable valuation of the premises supplied,*
>
> *c) the purposes for which the water is required,*
>
> *d) the description of the premises supplied,*
>
> *e) any other matter which the sanitary authority consider suitable, and may be so fixed either without or subject to any maximum or minimum limit."*

27. Provision is made for the collection of the charge from the person to whom it is supplied, and not from the person who uses the water. This has the consequence that the charging provision does not direct the imposition of a charge by reference to purpose but rather to the supply.

> *"(6) A charge under this section shall be paid by and recoverable from the person to whom the water is supplied."*

28. The charge is recoverable as a simple contract debt and is payable on demand:

> *"(7) A charge under this section for water supplied otherwise than by measure shall be payable in advance by equal half-yearly instalments on the 1st day of April and the 1st day of October, or by such other instalments as the sanitary authority to whom the charge is payable shall determine, and, in default of being paid within two months after becoming payable, shall be recoverable as a simple contract debt in any court of competent jurisdiction.*
>
> *(8) A charge under this section for water supplied by measure shall be payable on demand by the sanitary authority and, in default of being so paid, shall be recoverable as a simple contract debt in any court of competent jurisdiction."*

29. The sanitary authority had a power to disconnect for failure to pay the charge:

> *"(9) A sanitary authority may discontinue a supply of water in respect of which a charge under this section remains unpaid after the expiration of two months after the charge has become payable and—*
>
> *a) the cost of the discontinuance shall be recoverable in any proceedings for the recovery of the charge,*

b) the cost of re-connection shall be payable by the person liable for the charge."

The exemption from charges

30. Since 1997 then a local sanitary authority ceased to have power to levy a charge for the supply of water for domestic purposes, defined in s. 7 of 1962 Act as amended by the Act of 1997:

> *"(11) Any reference in this Act, or in any Act incorporated with or amending this Act, to a supply of water for domestic purposes shall be construed as a reference to a supply of water for ordinary household purposes (for example, drinking, washing and sanitation), to a dwelling house or a group water supply scheme, but exclusive of—*
>
> *a) a supply for agriculture or horticulture,*
>
> *b) a supply for any trade, industry or business,*
>
> *c) a supply for any purpose incidental to a dwelling-house or private garden (including washing a private vehicle) if the water is drawn otherwise than from a tap inside a dwelling-house or if a hosepipe or similar apparatus is used,*
>
> *d) a supply for central heating other than central heating of a dwelling- house,*
>
> *e) a supply for apparatus depending while in use upon a supply of continuously running water, not being an apparatus used solely for heating water,*
>
> *f) a supply to a sanitary authority."*

31. The exemption created by the Act of 1997 applied where the supply of water was for domestic purposes to a dwelling house defined as follows:

> *"(13) In this section—*
>
> *'dwelling house' means a building or part of a building used by a person as his or her place of private residence (whether as his or her principal place of such residence or not) and includes accommodation provided in such a residence to one or more students to enable them to pursue their studies but does not include any part of a building used for the provision, for the purposes of reward, with a view to profit or otherwise in the course of business, of accommodation, including self-catering accommodation, (other than accommodation provided in a place of private residence aforesaid to one or more students for the purposes aforesaid) unless the person to whom the accommodation is so provided uses the accommodation as his or her principal place of private residence".*

32. A dwelling house then is defined in s. 65A (13) to mean a building used by a person as his or her place of private residence, but not necessarily as a principal or only place of residence.

33. A supply to a group water scheme was also exempt from charges. This additional category of exemption was added by s. 12(2)(b) of the Act of 1997. A group water scheme is defined in subs. (13) as:

> *"a scheme whereby there is provided a private supply of water by means of a common or shared source of supply and distribution system."*

34. In summary, the legislative scheme permitted a sanitary authority to make charges for water services, but since 31st December, 1996, and following the enactment of s. 12 of the Local Government (Financial Provisions) Act 1997, which inserted a new subs. (1) and (1A) into s. 65A, a sanitary authority may not make any charge for water supplied for domestic purposes to a dwelling house or group water scheme.

35. As can be seen, the legislation since 1878 has made reference to the purpose for which water was supplied and has expressly made reference to domestic purposes. There is no definition in the legislation of what might be regarded as a domestic purpose and the matters to which regard must be had, contained in s. 65A (11) as quoted above at para. 30, are to some extent a definition of those purposes which are not domestic. The definition refers to "*ordinary household purposes*", and gives examples of drinking water and sanitation but excludes supplies for agriculture, horticulture or supplies for trade industry or business.

36. It is important also to note that subs. (12) of the amended s. 65A gives power to a sanitary authority to apportion or estimate that part of the water supplied which is for domestic purposes, and permits a charge to be levied for those purposes which are not domestic.

> *"(12) Where water supplied by a sanitary authority constitutes, or may constitute, a supply for domestic and other purposes, a sanitary authority may make such estimation, as they consider reasonable, of the proportion of that supply likely to be used for domestic purposes and may have regard to any such estimation in determining whether, and on what basis, to make a charge for a supply of water under this section."*

37. In summary, a water authority was not permitted since 31st December, 1996 to levy charges for the supply of water for domestic purposes if it is a supply to a dwelling house or to a group water scheme. I turn now to examine the arguments that the supply to the park was one within this exemption.

The arguments

38. It is accepted by the respondent that the units are dwelling houses within the meaning of the legislative provisions. The applicants argue that Meath County Council erred and acted *ultra vires* in imposing a charge for the supply of water, because the water was supplied to a dwelling house to be used for domestic purposes. It is argued in particular that what is exempt from charges is a supply "*to*" a dwelling and this word connotes motion or direction, and identifies the ultimate destination of the water as the test, such that the section cannot be construed on any reasonable interpretation, as meaning that if the supply be up to a fixed point which is not a private dwelling, it cannot be deemed to be a supply to such dwelling even when the dwelling is the ultimate destination or sole user of the water. It is argued in particular that the ownership of the pipes or conduits by which the water arrives at its ultimate destination, a dwelling house, is not in issue and such a requirement cannot be read into the legislation.

39. The applicants argue that a harmonious and purposive interpretation must be given to the legislation, and in particular it must be asked what the Oireachtas intended in the legislation which expressly excluded from the entitlement to levy a charge for the supply of water for domestic purposes. In particular, the applicants argue that the definition in subs. (11) of s. 65A of the Act of 1878 is central and that the respondent is incorrect in its assertion that for a supply of water to be one of domestic purposes there must be a direct supply from the public mains to a dwelling house, and that this definition would, of itself, exclude developments of apartment complexes, or private housing developments where the common areas are owned and managed by a management company and where the water is supplied to an identified point to the privately owned common areas. It is argued that were I to construe the legislation in such a narrow way that a significant number of private dwellings would be excluded from the provisions and would be liable to water charges. The applicants argue that the water supply to the caravan park was destined for each of the individual units, to be used by each of them for their individual and domestic purposes, and that the water was used by the owners of the units and by them alone.

40. It was not doubted that the purpose for which the individual unit, owner or occupier required the water was domestic, and it is accepted that the water was used for drinking, sanitation, washing, and that there was no commercial, industrial or recreational use such that would take the use of the water outside the definition of domestic purpose. The respondent however argues that the supply is to the park, and that the water travels from the public water mains immediately outside the caravan park through a private network for distribution to the individual caravan unit. It is contended that the supply can properly be characterised as one to the park taken as a whole, from where distribution takes place according to the contractual arrangements between the park owners and the individual unit owners. The respondent argues that the water was supplied to the caravan park and the ultimate destination of the water is not a matter to which the local sanitary authority needs to have regard.

Discussion

41. The question then is whether I must look at the ultimate destination or user of the water, or whether the Act creates a power to levy water charges against the person to whom water is immediately supplied. It is undoubtedly the case that the water was supplied to the first applicant in his capacity as manager or operator of the caravan park. It cannot be doubted that the water is supplied for purposes that are wholly domestic, and I have already noted that there are no shared facilities in the caravan park. The water is used exclusively to benefit the persons occupying the units on site, whether as their principal private dwelling or as a private holiday home, and satisfies the definition in subs. (11). There is no dispute between the parties in regard to this and thus the water is used for domestic purposes by the owners and occupiers of dwelling houses. What is in issue is whether the supply of water is to those individual dwelling houses or to the park itself.

42. The applicants have argued, *inter alia*, that were I to hold that the supply of water was to the caravan park and not the individual units that such an interpretation of the legislation would have implications for how local authorities were entitled to treat the supply of water to apartment complexes or other private estates.

43. The respondent argues that the significant difference between the arrangement that operates in the caravan park, and that which operates in an owners' management company is that the owners of the individual units in the caravan park have no legal right or interest in the common areas and no legal right in the form of an easement to the water pipes. It has not been argued that the owners of the mobile home units have a lease or other propriety interest in the individual stand on which their units are situate. In those circumstances, counsel for the respondent is correct that no argument could be made by the individual owners that they have a proprietary interest which might be served by an easement over the services.

44. It seems to me that this particular distinction, and whether easements or proprietary interests exist over the conduits supplying the water, does not answer the question raised before me. The legislation identifies two classes of supply which are excluded from water charges. The first is a supply to a domestic dwelling and the second is a supply to a group water scheme. I note that the legislation refers in the singular to a supply to a dwelling house, and not to a group of dwelling houses in an estate or other formal or informal grouping, and the only supply to a collective which is exempt is one to a group water scheme. It is accepted by the applicants that the scheme operated within the park is not a group water scheme and the respondent agrees that the operation cannot be properly so characterised. I consider that some guidance can be got from an analysis of what is meant by a group water scheme for the purpose of the legislation.

Group water schemes

45. Group water schemes are frequently found in rural areas of Ireland and the schemes are in operation in areas where there is no connection to a public water supply. 150,000 houses in rural Ireland were served by such schemes in 1997. The group schemes involve the owners of individual premises coming together to provide their own common water supply, usually through a form of trust and elected trustees act on behalf of its members in dealing with the local sanitary authority. Members of the group water scheme pay to the trust an agreed amount for the service, and there are, or have been, subsidies available from some, or perhaps all, local authorities for each house served by certain, often large, water schemes.

46. The legislation defines group water schemes and the definition, recited above at para. 33, is quite broad and makes no reference to the legal basis by which the water is supplied within a private area, for example whether there exists or can be said to exist an easement of wayleave for the flow of water within a defined area. What is required is that there exist a scheme, or an arrangement, by a group of persons for the provision or operation of a supply of water from a common or shared source and the water must be distributed through a common distribution system.

47. The definition of a group water scheme is not in my view confined to a group water scheme as it is colloquially understood, that is a scheme which is operated through trustees, or informally, for the purpose of supplying water to privately owned premises within a rural area. The definition of group water scheme seems to me to be broad enough to encompass the type of scheme or arrangement that exists in a privately owned apartment development, gated community, or other housing development where the common areas are vested in a management company or in an entity which operates and controls the supply of services. I consider that an owners' management company is a scheme within the meaning of the definition, and the activity carried out by the management company is an activity by which a common or shared source of the supply and distribution of services is managed and regulated. Such owner managed schemes are in my view exempt from water charges under s. 12(2)(b), as they are group water schemes within the meaning of the legislation, but this does not result in the inclusion of the type of water distribution system operated in the park by analogy with the type of scheme operated in a private housing development of the types analysed above.

48. It follows that the legislature intended to include a certain class of shared services and supply within the definition of those persons or bodies who would be regarded as exempt from water charges. The inclusion of a group water scheme in the legislation was likely to have been done precisely to allow a group water scheme and a management company to claim exemption from charges, so that the legislation did not confine the exemption to water supplied to a single dwelling house. I consider that for me to interpret the legislation as also excluding a supply to other collectives or groups of dwelling houses who, whilst they share a common source of

supply, do not have a common distribution system, would be to extend the express category of users to which the legislation was stated to apply. To do this would be impermissible and would be to ignore the will of the Oireachtas embodied in with what seems to be a clear statutory provision. Certain canons of interpretation guide me.

Canons of construction
49. A court must look to the language of the legislation and if there is a clear power to impose a charge, or a clear exclusion from a charging provision, the court should not look outside this. As stated by Kelly J. in *O'Dwyer v Keegan* 1997 2 ILRM 401,

> *The intention, and therefore the meaning, of an Act is primarily to be sought in the words used. They must, if they are plain and unambiguous, be applied as they stand.*

50. I do not consider that I offend the clear and unambiguous language of the amended legislation by refusing to accept the argument of the applicants that the legislation intended to exclude from the charging power a supply to any and all dwelling houses howsoever they receive their water supply. The mobile home units are not directly supplied by the water authority, and the direct supply is made through the park operators. It being accepted that there is no scheme of distribution which creates a group water scheme within the wide definition in the legislation, I consider that the water is not supplied to a dwelling house or to a group of dwelling houses which have the benefit of a group water scheme.

51. Further to hold otherwise would be to offend the maxim *expressio unius exclusio alterus* explained by David Dodd at para 5.89 of his text *Statutory Interpretation in Ireland* (2008, Dublin):

> *"Where the legislature in the text deems it appropriate to expressly cater for particular matters, and could have included other matters, but did not, then the inference arises that such omissions are deliberate and that such matters are intended to be excluded from the provision. The maximum is at its strongest where the legislature enumerates certain matters connected by a common theme, class or category, as opposed to covering them by general words, but omits certain things from the list. The maxim operates by indicating the legislature's intention by implication or inference"*

52. I adopt the dicta of Laffoy J in *O'Connell v An tÁrd Chlaraitheoir* [1997] 1 I.R. 377 where she states:

> *"In my view, the canon of construction which comes into play in construing the first limb is the maxim expressio unius est exclusio alterius (to express one thing is to exclude another). It is obvious that the draftsman doubted that the word "occupier" in its ordinary meaning would include the various officials of public institutions mentioned in s. 38 and he expressly included them in the definition. The draftsman having expressly included the named officials, it must be implied that other officials and employees of such public institutions are excluded."*

53. I conclude that the legislation contains no ambiguity, and that it follows from the express inclusion of a group water scheme from the exempting provisions that the Oireachtas did not intend to exclude from charges all water supplied to collective recipients, even when they use the water for domestic purposes, and where the supply is to a dwelling house. The tests in the legislation are cumulative, and while the water is used for domestic purposes, the supply is neither to a dwelling house nor to a group water scheme and no other supply is exempt. I hold then that Meath County Council did not act *ultra vires* in imposing a charge for the supply of water.

Historical context: sewage disposal charges
54. The second question that arises is whether the charges imposed by Meath County Council, were properly levied for the disposal of waste water

55. The Act of 1878 gave power to local sanitary authorities to regulate sewers within its functional areas. Section 30 of the Act empowered a sanitary authority to construct sewerage works within their district and to receive store or otherwise dispose of such sewage. A sewerage system may be one which carries any form of waste water not merely sanitary water but also waste water from bathrooms, kitchens etc

56. The general power to impose charges for the disposal of waste water is also found in s. 2 of the Local Government (Financial Provisions) (No. 2) Act 1983, quoted at para. 24 above. It is accepted by the respondent that the power to levy a charge for the disposal is not a derivative of the power to charge for the supply of water, and the power to levy these charges is expressly stated as a distinct power.

57. Section 12 of the Local Government (Financial Provisions) Act 1997, abolished the power of the sanitary authority to levy a charge "for the disposal by it of domestic sewage", and the express language of the section makes no reference to the source of the water, and no express link is made to a domestic dwelling, or organised group of dwellings as is found in the case of the abolition of the power to charge for the supply of water.

58. The respondent accepts that the sewage or waste water produced by each individual unit is domestic sewage in as much as it is produced in a residential context and is a by-product of normal domestic activity. The dispute is whether the sewage or waste water is to be characterised as domestic sewage after it leaves the individual unit. The factual circumstances are as outlined above, namely that the sewage leaves the individual unit and passes through conduits and pipes in the common areas of the caravan park from where it is transported to the public sewer immediately outside the north-western boundary of the site.

59. Counsel for the respondent argues that while the waste water is properly characterised as domestic sewage at the time it leaves the individual unit, it becomes sewage of a non-domestic type by virtue of the manner in which it is managed before it passes into the public sewer mains. It is asserted that as the sewage passes through private mains owned and operated by the first applicant, the local authority may levy a charge for the collection of the waste water at the point it is deposited in the public sewer.

60. The applicant argues that the waste water or sewage remains domestic sewage as it is a by-product of the occupation and use by individual owners of their units in the park and arises from the normal occupation of the units as domestic units. I accept that the applicant is correct in this assertion. There is no waste water treatment activity of any sort carried on in the park, and the waste water passes into the public sewer in an untreated form, and as it was when it was deposited by the unit. But it is appropriate to consider whether the respondent is correct in asserting that the character of the water is not the sole question before me, as the question relates to the charge for the disposal of the waste water and sewage at the point at which it enters the public mains.

61. A feature of the legislation is that, while the exemption from charges for the supply of water applied only when the cumulative

test was satisfied, and when the water was supplied to a dwelling house for domestic purposes, the removal of the power to levy charges for the disposal of domestic sewage is not linked to the source of the fecund matter, but merely to its nature as foul water. The exemption applies when the sewage is domestic in nature, and there is nothing in the legislation that limits the exemption to sewage which is disposed of by a dwelling house, or by a group of dwelling houses.

62. The respondent argues that as the individual unit owners pay a charge for the disposal of waste water as part of the annual licence fee, that the sewage loses its character as domestic sewage, and for me to hold otherwise would enable the applicant to evade the statutory obligation to pay the charge. It is argued that I should seek to avoid giving a statutory provision an illogical interpretation, or one which results in an obligation being evaded. In the case of *Revenue Commissioners v. Associated Properties* [1951] I.R. 140 the Supreme Court was asked to read the words shareholders in s. 14(9)(b)(i) of the Finance Act 1944 as meaning "*all shareholders jointly*", which would have resulted in the respondent to the claim evading a taxation liability under the statute. In coming to a conclusion that the words should not be so construed the Supreme Court stated following:-

> *"I think there is a good deal of authority for the proposition that a construction which would facilitate the evasion of a statute is to be avoided. Sect. 14 was obviously enacted to close a loophole for escape from all or part of the corporation profits tax. If in the very section enacted for that purpose the Legislature left open the facile and obvious means of evasion I have indicated, its action would be like that of the half-witted farmer who put up an elaborate fence to close a gap on his land and at the same time left open beside it another gap fully as wide without any fence whatever."*

63. I do not find the argument by analogy convincing. The judgment of the Supreme Court arose in the context of an ambiguous statutory provision. I can find no ambiguity in the exemption in s. 12 of the Act of 1997, which abolishes the power of a sanitary authority to levy charges for the disposal by it of domestic sewage. The sewage is not treated within the park, and the action of the disposal and further treatment of the fecund matter is done wholly by the sanitary authority itself. The disposal is a disposal by the sanitary authority of waste water with the character of domestic sewage. The Oireachtas saw fit not to link the domestic sewage to its source or collective source, as it had done with regard to the supply of water. I conclude that once the sewage is domestic in nature no charge may be levied by the sanitary authority for disposal. The circumstances may of course be different if sewage is treated or managed in some way before being deposited into the public sewer, but the circumstance that prevails in this instance is not complicated by any process such as would remove from the sewage its characteristic as wholly domestic in nature.

64. I also reject the argument by the respondent that to hold that the Oireachtas intended to exempt the disposal of waste water in this instance from charges would in effect give the applicant a windfall, in that charge for the disposal of waste water had been included in the annual licence fee. This private contractual arrangement is not a matter that could affect the interpretation of the statutory scheme, and further were it to so affect the sanitary authority would have to concern itself with these internal and private contractual matters, a process which would be cumbersome and not consistent with the proper and smooth operation of the charging regime.

65. The Oireachtas envisages two separate charging schemes, and in fact in this case the park operators received invoices from Meath County Council which itemised separately the charges for supply and disposal. The park continues to receive invoices for the disposal of waste water after it has become self sufficient in fresh water. It is reasonable to conclude that two separate exemption provisions could also be enacted.

66. In *Athlone Urban District Council v Gavin* 1985 I.R. 432 the Supreme Court interpreted the power to make a charge for the supply of water contained in the Act of 1983 as a separate statutory power, distinct from the power to charge for waste water disposal and refuse collection. The power to levy the charge may exist only and insofar as it is created by legislation.

67. The public health interest in the proper and effective disposal of sewage has long been given legislative effect and for that reason the Oireachtas could rationally have intended to set a less stringent bar for the exclusion of charges for the disposal of waste water. Indeed, the power or duty of a local authority or water authority to drain for the purposes of the Public Health Act 1878, included in some cases an obligation to drain offensive water. The underlying rationale for such can easily be discerned in public health concerns.

68. Accordingly as the legislation expressly excludes the power to levy a charge for the disposal of domestic sewage, I conclude that the imposition of waste water charges from the park was *ultra vires* Meath County Council.