

THE HIGH COURT

[Record No.: 2017/56 C.A.]

[Circuit Court Record No.: 2015/000398]

BETWEEN

JOHN MEIER AND HILDA MEIER

PLAINTIFFS/APPELLANTS

AND

PATRICK (OTHERWISE PADDY) LYNCH

DEFENDANT/RESPONDENT

JUDGMENT of Mr. Justice Henry Abbott delivered on the 1st day of September, 2017

1. This appeal is brought against an Order of Linnane J. in the Dublin Circuit Court refusing a motion by the plaintiff to have the proceedings transferred to the High Court and instead striking out the motion and the proceedings for want of jurisdiction.

BACKGROUND

2. The Circuit Court proceedings were proceedings for ejectment of the defendant brought by way of Ejectment Civil Bill on Title. The property the subject of the Circuit Court proceedings is commercial property. The plaintiffs/appellants are owners of ALL THAT AND THOSE the premises at Jamestown Road, Finglas, Dublin 11, which is registered land, registered in Folio 73803F County Dublin, comprising a small industrial estate with 5 units and some vacant space.

3. By Tenancy Agreement, dated 1st of July 2002, between the second named plaintiff/appellant and the defendant/respondent ALL THAT AND THOSE that portion of the premises consisting of Units 2.5 and outside space for mobile office was demised to the defendant/respondent for a term of 365 days from the date thereof at a rent of €127 per week. Following the expiration of the aforementioned Tenancy Agreement, the defendant/respondent continued in occupation of the premises without paying any rent and further extended this occupation to include other portions of the premises some of which may have been sub-let by the defendant/respondent to third parties the identity of whom is unknown to the plaintiff/appellant.

4. The plaintiff/appellant wrote to the defendant/respondent on the 10th of January 2011, the 7th of September 2012 and on the 5th of December 2012 to vacate the premises but he failed to comply. Circuit Court proceedings were served on the defendant/respondent on the 30th of January 2015 on behalf of the plaintiff/appellant. While an appearance was entered by the defendant/respondent on the 27th of February 2015 no defence has been delivered.

5. The rateable valuation of the premises was increased in or about the 1st of January 2014 to €9,310.00 and at the date of issue of the Circuit Court proceedings the property the subject of the proceedings was not rated as a single unit but rated together with other property and the combined rateable valuation of this property and the other property exceeded €254.00. Because of this and by way of notice of motion, the plaintiff/appellant sought to have the proceedings transferred to the High Court. The learned Circuit Court judge struck out the proceedings for want of jurisdiction and that decision is now appealed to this Court.

SUBMISSIONS

6. Ms. Cannon B.L., counsel for the plaintiff/appellant, submits that the jurisdiction of the Circuit Court in ejectment proceedings at the date of issue of the proceedings is to be found at References 9 and 10 of the table in Schedule 3 of the Courts (Supplemental Provisions) Act 1961. Schedule 3 sets out in order the classes of civil proceedings in respect of which jurisdiction is conferred on by the Circuit Court, stating in each case any exclusion of jurisdiction. Reference 10 of Schedule 3 gives the Circuit Court jurisdiction in respect of an action of ejectment for a year's rent in arrear maintainable in the High Court under s. 52 of the Act of 1860, save where the rateable valuation of the land exceeds £60.00 (subsequently increased to £200.00). Reference 9 of Schedule 3 gives the Circuit Court jurisdiction in respect of an action of ejectment other than an action under s. 82 of the Civil Bill Courts (Ireland) Act 1851, or under s. 78 or 80 of the Landlord and Tenant Law Amendment Act Ireland 1860 or an action of the kind specified in Reference 10. Ejectment on title proceedings are historically different from actions under s. 82 of the Act of 1851, s. 78 or 80 of the Act of 1860 or s. 52 of the Act of 1860 (Reference 10) and are treated separately from same in Harrison *The Law and Practice Relating to Ejectments in Ireland and Deale, Law of Landlord and Tenant in Ireland* insofar as the jurisdiction of the Circuit Court in relation to such ejectments derives not from any of the above statutory provisions but from a different provision, s. 79 of the Act of 1851. Accordingly, the instant proceedings fall within Reference 9 of Schedule 3. On the face of Schedule 3 as set out electronically on irishstatutebook.ie, there is and never has been any exclusion of Circuit Court jurisdiction in respect of Category 9 where the rateable valuation of the property concerned exceeds £60/£200. It is however footnoted at p. 330 of Deale, *Law of Landlord and Tenant in Ireland* (1968) that:-

"In the 1961 Statutes, p. 1311, Ref. No. 8, the reference in column 3 to the rateable valuation applies also to Ref. No. 9 on p. 1313. This is not clear, however, if Ref. No. 9 is looked at first, as column (3) thereat is apparently blank. The continuation of the matter onto p. 1313 of the bound volume of the Statutes is interrupted by the interposition of the bold headings on p. 1313, and thus a misleading impression is given. If p. 1311 had been sufficiently long for Ref. No. 9 to be contained in it, the confusion would not have arisen."

7. Counsel contends that it is clear from the above that there could be legitimate room for confusion as to whether or not the usual requirement of a rateable valuation of less than £200 (€254) applied to Ejectment Civil Bill proceedings on title in the Circuit Court.

8. Further confusion has arisen in relation to Circuit Court jurisdiction following the decision of the Court of Appeal in *Permanent TSB plc v Langan* [2016] IECA 229. Although this case related to domestic properties, the amending legislation enacted to deal with it is not so restricted, and is open to an interpretation which could cure any jurisdictional difficulties affecting the instant proceedings. Civil Liability and Courts Act 2004, s. 53, (brought into force by S.I. 2/2017 on the 11th January, 2017), provides that the jurisdiction of the Circuit Court in property matters shall be €3 million. The Courts Act 2016, s. 1, (also brought into effect by S.I. 1/2017 on the 11th January 2017), inserts into the Act of 2004 an additional section, s. 53A, subs. 1, which provides that it shall be presumed, until the contrary is shown, that the property the subject of Circuit Court proceedings is less than €3 million in value and subs. 2 of which states that the aforementioned subs. 1 shall not apply to civil proceedings initiated before the passing of the Act of 2016. The date of passing of the Act of 2016 was the 28th December 2016. The terms of s. 53A(2) and its statutory inclusion within the presumption

in s. 53A of proceedings issued after the 28th December 2016 (being a date prior to the coming into effect of the Act of 2004) evidence a statutory intention that the jurisdictional increase in s. 53 was intended to have retroactive effect. If s. 53 were not intended to have retroactive effect, then the section could not apply to any proceedings pre-dating the 11th January 2017 and there would be no need to exclude its benefit from proceedings initiated after the 28th December 2016 (insofar as these proceedings could never come under s. 53 anyway). Nor would there be any room for giving the benefit of the presumption to proceedings initiated between the 28th December 2016 and the 11th January 2017; nonetheless this is what s. 53(A)(2), on a literal reading, purports to do. In the circumstances, the only logical interpretation of s. 53 when read in conjunction with what is now the immediately succeeding section, s. 53A, is that it was intended to have retroactive effect. If s. 53 has retroactive effect, then it operates to correct any want of jurisdiction in the instant proceedings insofar as the property in question has a market value of less than 3 million Euros and this is evidenced by a Valuer's Report dated the 2nd May 2017.

9. Counsel for the plaintiff/appellant further submits that there is not one, but two, statutory provisions which would have entitled the learned Circuit Court judge to transfer even in the absence of jurisdiction. The first of these provisions is s. 37 of the County Officers and Courts (Ireland) Act 1877 which provides as follows:-

"If during the progress of any suit or matter pending in a Civil Bill Court under this part of this Act it shall be made to appear to the chairman that the subject matter exceeds the limit of amount or value to which the jurisdiction of the chairman is hereby limited, it shall not affect the validity of any order or decree theretofore made, but unless the parties shall, by a memorandum or consent signed by them or their respective attorneys, consent that the chairman shall proceed in and determine the said suit or matter, the chairman shall direct the said suit or matter to be transferred to the Lord Chancellor, who may regulate the whole of the further proceedings in the said suit or matter when so transferred, and may either retain the said cause within his own jurisdiction for his own decision, or if it shall appear to him for the interest of justice that the same should proceed in the Civil Bill Court where it was commenced may so direct; and such order or consent of the parties shall confer jurisdiction on such court to proceed in and determine such suit or matter, and the decree or order of the Civil Bill Court in any such suit or matter shall be subject to appeal except in cases of consent in which the memorandum shall otherwise provide."

10. This discretion is discussed by Noonan J at para. 27 of his judgment in *Bank of Ireland v Hanley & Giblin* [2015] IEHC 738, in which he states as follows:-

"[t]his section explicitly recognises that the validity of any order made by the Civil Bill Court while a suit is pending is unaffected where it subsequently appears that the subject matter exceeds the limit of the jurisdiction and where such appears, the court shall transfer the matter to the Lord Chancellor, now the High Court. Undoubtedly the Circuit Court continues to enjoy jurisdiction to, and routinely does, transfer cases to the High Court where, for example, it becomes apparent that the quantum of the plaintiff's claim may exceed the limit of the Circuit Court jurisdiction."

11. An alternative discretion to transfer even in the absence of jurisdiction may be found in s. 21 of the Courts of Justice Act 1936 which reads as follows:-

"(1) Where an action is brought in the Circuit Court which that court has no jurisdiction to hear and determine, the judge shall, on the application of the defendant or one of the defendants or on his own motion, as soon as such want of jurisdiction becomes apparent (unless such consent as may be sufficient to cure such want of jurisdiction is duly lodged within such time as the judge shall allow) order the action to be struck out and may, if he thinks proper, make an order awarding to the defendant such costs as the Court could have awarded if it had jurisdiction to hear and determine such action and the plaintiff either had not appeared or had appeared and failed to prove his demand.

(2) Whenever a judge of the Circuit Court is required by the foregoing sub-section of this section to order an action to be struck out, such judge may, if he so thinks proper having regard to all the circumstances of the case, in lieu of making such order as aforesaid, transfer such action to the High Court and make such order as to costs of the proceedings theretofore had in the Circuit Court as shall appear to him to be proper."

CONCLUSION

12. This Court has carefully listened to the arguments and considered the authorities together with the written and oral submissions made on behalf of the plaintiff/appellant, and is very grateful for same. This Court also notes the absence of representation on behalf of the defendant/respondent.

13. It appears to me that the exclusion of a rateable valuation in Reference 9 of Schedule 3 of the Act of 1961 does give rise to the confusion as outlined supra. A perusal of Delany, *The Courts Acts 1924 – 1991*, (Dublin, 1994), p. 197, does nothing to alleviate this confusion as there is no "Exclusion of jurisdiction" noted in relation to Reference 9 of Schedule 3 of the Act of 1961.

14. I am also satisfied that the rateable valuation of the entire property was increased circa the 1st of January 2014, a date subsequent to attempts to have the defendant/respondent vacate the premises the subject of these proceedings. This has added to the confusion regarding the table valuation of the premises and the jurisdiction of the Circuit Court in this matter.

15. I am further satisfied that the Circuit Court does have the authority to transfer this matter to the High Court when itself lacks jurisdiction under the provisions of the Courts of Justice Act 1936.

16. Accordingly, the appeal is allowed.