



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 231

Record No. 2016/222

**Ryan P.
Finlay Geoghegan J.
Hogan J.**

IN THE MATTER OF THE REGISTRATION TITLE ACT 1964 AND IN THE MATTER OF FOLIO MN3294F MONAGHAN

BETWEEN/

MICHAEL QUINN AND BRIGID QUINN

APPLICANTS / APPELLANTS

- AND -

PROPERTY REGISTRATION AUTHORITY OF IRELAND

RESPONDENT

- AND -

JOHNNY HOEY AND BRIGID HOEY

NOTICE PARTIES

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 27th day of July 2017

1. In one of the earliest reserved judgments delivered by the Supreme Court following its establishment in June 1924, *Re Fitzgerald* [1925] 1 I.R. 39, O'Connor J. described the appeal in that case as one of "some importance" because ([1925] 1 I.R. 39, 44) it raised the question:

"whether the register of lands is a public document open to the inspection of any member of the public, or only to those who appear from the register to have some estate or interest in the registered lands, or those who can show that the estate has devolved upon them in some way."

2. This is almost precisely the same issue which this Court now has to address under slightly altered statutory circumstances close on a century later. The issue arises in the following way.

Background to the application

3. Rule 159(1) of the Land Registration Rules 2012 (S.I. No. 483 of 2012) ("the 2012 Rules") provides that the only persons entitled to inspect a document filed in the Registry are:

- (i) the registered owner of the property in question;
- (ii) any person authorised by the registered owner of that property;
- (iii) any person authorised by a court order; and
- (iv) any person authorised by the 2012 Rules.

The present appeal turns in large part on the interpretation of Rule 159(9) of the 2012 Rules:

"The Authority may, in special circumstances and on such terms as it shall think fit, permit a person to inspect or obtain a copy of a document filed in the Registry."

4. The applicants, Mr. and Ms. Quinn, are a married couple who are litigants in person in this statutory appeal against the decision of the Registrar of Titles pursuant to s. 19 of the Registration of Titles Act 1964 ("the 1964 Act"). (While the wording of the applicants' notice of motion did not in terms invoke this statutory provision, it was agreed in the High Court that the relief sought in substance amounted in substance to an appeal under s. 19 of the 1964 Act). That appeal was dismissed in the High Court by Abbott J. in a judgment delivered on the 11th April 2016: see *Quinn v. Property Registration Authority* [2016] IEHC 212. The Quinns have now appealed to this Court against that decision.

5. Mr. Quinn is the director of a company, Cloughvalley Stores Ltd. ("Cloughvalley"), and Ms. Quinn is the company secretary. Cloughvalley was once – but is not now – the owner of certain registered land in Co. Monaghan, as the lands in question were, it appears, sold by Allied Irish Banks plc to effect a sale to the notice parties, Johnny Hoey and Brigid Hoey as mortgagee in possession. The fundamental question presented here is whether Mr. and Ms. Quinn are entitled to obtain a copy of the relevant dealing instrument in the Land Registry file.

6. As it happens, Cloughvalley is currently in receivership, but it is still trading. In his affidavit grounding the application to the High Court, Mr. Quinn stated that he qua director still had obligations to file accounts in relation to the company and that he requires sight of the relevant dealing instrument for this purpose. In her affidavit Ms. Quinn said that the property was sold without her consent and without a court order to the new owners. She maintains that the sale was unauthorised. She maintained that she "must be entitled"

to inspect the instrument on behalf of the company as her property (and that, presumably of the company) "cannot be taken and sold behind closed doors".

7. The Deputy Registrar, Ms. Liz Pope, has sworn an affidavit in response in which she pointed out that the applicants are, by their own admission, now aware of the price for which the lands were transferred and that the sale was effected by AIB as the registered chargee of the lands. She stated that there was accordingly no evidence that the applicants actually required sight of the instrument in question.

The correspondence with the Property Registration Authority

8. It is next necessary to consider the correspondence between the parties prior to the present application to the High Court. On the 9th May 2014 the second named appellant, Ms. Quinn, submitted an application to the Property Registration Authority ("the PRA") seeking to inspect an instrument with a particular dealing number. The application itself recorded that the instrument sought related to the lands described in Folio 3294F County Monaghan, beings lands at Sherlock Road, Carrickmacross, County Monaghan, of which Johnny and Brigid Hoey, the notice parties, were now the registered owners. The application was made by Ms. Quinn on behalf of Cloughvalley and was stated to be made pursuant to Rule 159(9). In that application Ms. Quinn stated that she was the company secretary of Cloughvalley and that as the company was the previous owner of the lands, she wanted to inspect the relevant Land Registry Folio.

9. The PRA did not regard this request as in itself disclosing circumstances such as would permit Cloughvalley's officers to inspect the dealing instrument. The PRA then corresponded with Ms. Quinn requesting her to set out the special circumstances which she alleged rendered it appropriate to permit her to inspect these instruments. Ms. Quinn duly responded stating that the applicants were directors of Cloughvalley and that Allied Irish Bank plc had purported to appoint a receiver over the company's undertaking three and a half years earlier. They contended, first, that the appointment of the receiver was flawed; second, that the receiver had purported to take possession of lands which were not owned by Cloughvalley; third, that the receiver seized and disposed of plant and equipment which was not the property of Cloughvalley; and, fourthly, they were finding it difficult to get information from the receiver. The Quinns stated that, as directors of the company, they were "answerable and accountable for the receiver's actions and any subsequent losses or damage to the company".

10. A few weeks later on the 18th June 2014 the PRA wrote indicating that Ms. Quinn had not established special circumstances existed which would justify permitting Cloughvalley to inspect the instrument in question and indicating that her application was being treated as withdrawn. It is accepted for the purposes of this appeal that this amounted to a refusal of the application by the PRA and that the application was formally treated as having been withdrawn solely so that the application fee could be refunded.

11. The reason given by the PRA for the refusal of the application was as follows:

"You have not shown sufficient grounds as to why you are entitled to inspect or obtain an official copy of D2012LR085263D. The matters raised by you within said correspondence are not matters for the Property Registration Authority. Said dealing was a sale by Allied Irish Banks plc the registered owner of the charge registered as a burden at entry no. 1 part III of MN3294F. The Transfer Deed contained within said Instrument is not by a receiver but rather by a mortgagee in possession under its statutory powers."

12. The appellants took issue with this decision by way of a letter dated the 25th June 2014. In that letter they essentially disputed that they challenged the validity of the appointment of a receiver by AIB. The PRA then resubmitted the application to the Examiner of Titles in light of the said letter and later, by way of a letter dated the 17th July 2014, informed the Appellants that the decision remained unchanged pointing out, once again, that the transfer in question - which happens to be dated the 3rd May 2012 - was a transfer by a mortgagee in possession under its statutory powers and was not a transfer by a receiver.

13. A second application was made by the Quinns one year later on the 6th July 2015. In support of the application Mr. Quinn referred to a letter dated the 3rd July 2015 to the Examiner of Titles and the documents attached thereto. In this correspondence the Quinns maintained that they should be permitted to inspect and take copies of the relevant Instrument because either they or Cloughvalley had an interest in the property prior to the purported transfer of the same to the present registered owners and they disputed the validity of that transfer.

14. This application was again refused by way of a letter dated the 21st July 2015. Once again rather than a simple refusal, the PRA treated the application as having been withdrawn, so that the relevant application fee could be refunded.

The appeal to the High Court

15. Section 19(1) of the 1964 Act provides that a refusal of this nature may be appealed to the High Court:

"Any person aggrieved by an order or decision of the Property Registration Authority may appeal to the Court and the Court may annul or confirm, with or without modification, the order or decision."

16. On the 22nd October 2015 the appellants instituted the present proceedings by way of originating notice of motion seeking an order directing the PRA to make a certified copy of the relevant instrument available to them. By a reserved judgment delivered on the 11th April 2016, Abbott J. held that there were no special circumstances for the purposes of Rule 159(9) of the 2012 Rules disclosed by this appeal. He stated:

"The applicants still have the possibility to apply to the judge before whom their case against the AIB is still pending for such relief as may be afforded to them for sight or inspection of the relevant instrument, if, in the opinion of the court, it is necessary for same for the purposes of pursuing their action or defending the application being made against them by the bank to have their proceedings struck out. In all probability the bank will have a copy of the instrument concerned, and would be in a position to affirm that the copy thereof is the instrument in the Land Registry. It might not be necessary to have inspection or production of the instrument in the Land Registry at all. Even if the original of the instrument now in the Land Registry was necessary for the purpose of pursuing court proceedings, it is for the court hearing the proceedings to make such a determination and then only on notice to the AIB and the registered owners. I do not presume to speculate what the court would decide in such circumstances, as the issues are clearly not before this Court as an appellate court hearing an appeal under s. 19 of the Registration of Title Act 1964. For these reasons, I find that there are no special circumstances within the meaning of para. 9, r. 159 of the Land Registry Rules of 2012, by which the authority ought to have permitted the applicants to inspect or obtain a copy of the instrument filed in the Registry. I have already informed the applicants at the hearing that this would be the decision of the court, but undertook to furnish the reasons as they appear in this judgement. Accordingly, the appeal is dismissed."

17. Abbott J. accordingly affirmed the PRA's decision to refuse these applications. The judgment in effect re-states the general rule that no one other than the registered owner of lands and those authorised by him or her should be entitled to inspect documents which had been filed in the Land Registry and which relate to his or her lands, while stressing that these applicants had not established "special circumstances" such as would justify the departure from that rule.

18. As I have already indicated, the essential issue presented on the appeal to this Court is whether Abbott J. was correct so far as the issue of special circumstances was concerned. Before considering this question it is, however, next necessary to examine the background and origins of Rule 159 of the 2012 Regulations.

The Genesis of Rule 159 of the 2012 Regulations and the Supreme Court's decision in *Re Fitzgerald*

19. Rule 159 of the 2012 Rules provides:

"(1) The registered owner of property and any person authorised by such owner, or by an order of the court or by these Rules, but no other person, may inspect a document filed in the Registry on a dealing or transaction with the property of the owner.

(2) Any person who would be entitled to inspection of a document relating to property, if its ownership was not registered under the [1964] Act, and the document was in the possession of the person by law entitled to the custody thereof, shall be entitled to inspect the document, if filed in the Registry.

(3) An affidavit of judgment deposited in the Registry pursuant to the Judgment Mortgage Ireland Act, 1850, as amended by the Act, or an application for registration of a judgment mortgage under Rule 110 may be inspected by any person so long as notice of its deposit or the entry of the judgment mortgage is uncanceled in a register.

(4) A memorandum of a *lis pendens*, bond, recognisance or inquisition filed in the Registry may be inspected by any person so long as the entry relative to it remains uncanceled in a register.

(5) An application, assent, affidavit, or transfer, made by a personal representative of a deceased owner of property that vested in the personal representative may be inspected by a devisee or other person, except a creditor, having an interest in the property under the owner's will, or, where the owner died intestate, by a person in whom a beneficial interest in the property devolved on the intestacy, or by a person who satisfies the Authority that he/she is the successor in title of one of such persons.

(6) An instrument filed in the Registry under Rule 130(5) may be inspected by the person by whom it was lodged or by any person who satisfies the Authority that he/she is entitled to the benefit of a right created by the instrument.

(7) An instrument filed in the Registry under Rule 46 may be inspected by any person who satisfies the Authority that he/she is the owner or person(s) entitled to be the owner of an unregistered servient tenement property, over which a right was registered as appurtenant to a dominant tenement property under Section 49A of the [1964] Act, on the production of such proofs as may be directed by the Authority.

(8) Any person entitled to inspect a document filed in the Registry may obtain a copy of it.

(9) The Authority may, in special circumstances and on such terms as it shall think fit, permit a person to inspect or obtain a copy of, a document filed in the Registry.

(10) An application to inspect or obtain a copy under this rule shall be made in Form 96.

(11) Before allowing inspection of a document by a person claiming inspection under Rule 159, the Authority may make such inquiries and give such notices as it may think fit. Notice under this rule shall be in Form 97."

20. In the context of the present appeal the relevant sub-rules are Rule 159(1) and Rule 159(9). Rule 159(1) may be regarded as affirming the confidential nature of a landowner's title documents, while sub-rule (9) contemplates that such confidentiality may be disregarded 'in special circumstances'. Rules to this effect were first promulgated in the Land Registration Rules 1937 and have continued through different iterations up to the present 2012 Rules.

21. All of this raises the antecedent question as to the nature of the land registration system following its first introduction in Ireland in 1891 with the Local Registration of Title (Ireland) Act 1891. Did it create a public register to which the public might have general access, perhaps on payment of a fee in much the same manner as the Companies Registration Office? Or did it create a register in the interests of securing certainty in matters of title and conveyancing, while preserving the essential confidentiality of land ownership?

22. Some of these questions were addressed by both the High Court and the Supreme Court in *Re Fitzgerald* [1925] 1 I.R. 39. In that case the party seeking to inspect documents which were held in the Land Registry had previously obtained a judgment for £350 against one Timothy Fitzgerald. When he sought to investigate whether the judgment debtor owned any lands against which he might execute, he discovered that an interest in lands which ought to have been inherited by the judgment debtor from his father had in fact been registered in the name of the debtor's brother a month after the proceedings had issued. Suspecting that this was on foot of a fraudulent conveyance, he sought leave to inspect the underlying documentation. The application was refused by the Registrar of Titles, which refusal was initially upheld in the High Court by Wylie J. In his judgment Wylie J. said ([1925] 1 I.R. 39, 41):

"If I were to decide otherwise no one's title would be safe. The law regards title deeds as sacred, entitled to as much secrecy as a man's bank account, and no stranger can scrutinise them for the purpose of looking for flaws."

23. On appeal the Supreme Court took a different view. In his judgment O'Connor J. first stated ([1925] 1 I.R. 39, 44):

"Let us see, then, what are the rights the public over the register directed to be kept by the Local Registration Title Act. I do not think that it can be open to dispute that the register is a public register. The office was created for the benefit of the public at large, not for the benefit of any section of the public or for any particular locality. ...But in the register of titles to land, every subject of the State may have an interest irrespective of locality. The Office for the Registration of Titles, moreover, is maintained out of public funds to which every member of the State contributes, and I cannot conceive any more certain indication of the public character of an office in that it is maintained by the State and for the State. It follows that the documents kept in such an office are public documents in the fullest sense."

24. O'Connor J. then continued ([1925] 1 I.R. 39, 45) by saying:

"In the case, therefore, of public documents, there is a common law right of inspection, but that right must necessarily be exercised within certain limits. Denman C.J. limited the right to such persons who can prove themselves to have an interest. Obviously, this is a proper limitation, because the uncontrolled inspection of public documents might result in a public nuisance. It might lead to disturbance of office business, waste of the valuable time of public officials, disarrangement of records and general annoyance. Further, there are certain documents which, for State reasons, ought not to be disclosed, and the general right of the public must, for that reason be curtailed. But, in the absence of any such reasons as I have mentioned, the general common law right is maintained in favour of any person who can show that he has an interest."

25. O'Connor J. then went on to hold that the judgment creditor had, in fact, a sufficient interest to seek to inspect the documents in question ([1925] 1 I.R. 39, 46):

"The facts are as I have already stated, and it does not require very much astuteness to form a good guess as to the reasons for the change in the register. There are good grounds for the suspicion that it was merely a device for saving the defendant's property from some form of execution, and that the transaction was fraudulent. This, in my opinion, gives the plaintiff an interest in investigating the transaction, which could not be done without a full inspection of the register. It cannot be said that his motive was idle curiosity, or, indeed, in any respect unreasonable. It seems to me that he was actuated by a legitimate desire to expose a transaction which any reasonable judgment creditor would be justified in treating as *prima facie* fraudulent. In my opinion, such a person is deserving of assistance from this Court."

26. O'Connor J. then proceeded to contrast the wording of the s. 104 of the (English) Land Transfer Act 1875 with that of s. 94(1)(k) of the Local Registration of Title (Ireland) Act 1891, considering that the similarities were "remarkable". He then stated ([1925] 1 I.R. 39, 48):

"in the former we have the words: 'may inspect and make copies of and extracts from any register or document in the custody of...' In the latter we have 'The inspection of and making copies of or extracts from any register or document in the custody of. This makes it clear that the learned draughtsman of the later Act worked upon the former to some extent as a precedent, and it is very remarkable that the negative words expressly infringing on the public right, and which were before his eyes, were omitted by him and, no doubt, deliberately and for good reasons."

27. Section 104 of the 1875 Act prevented – subject to exceptions – the general public from gaining access to the register, but as O'Connor J. noted that prohibition was not reproduced in s. 94(1)(k) of the 1891 Act.

28. Although O'Connor J. naturally acknowledged that the common law right to inspect public documents could be curtailed and regulated by legislation, he nonetheless held that neither the 1891 Act nor the Rules and Orders made thereunder had, in fact, done so in respect of documents held in the Land Registry.

29. In the wake of *Fitzgerald* the Land Registration Rules 1937 (S.R. & O. 264 of 1937) ("the 1937 Rules") expressly curtailed the public right to inspect documents lodged in the Land Registry. Rule 187 of the 1937 Rules provided:

"187. The registered owner of property, and any person authorised by such owner, or by an order of a court, or by these rules, *but no other person*, may inspect a document filed in the Registry on a dealing or transaction with the property of the owner." (emphasis supplied)

30. Rule 187 was, however, subject to Rule 190, which provided:

"190. The Registrar may, in special circumstances and on such terms as he shall think fit, permit a person to inspect a document filed in the Registry; for instance, when he is satisfied that the inspection is not for a purpose adverse to the interests of a registered owner who is out of the jurisdiction, or who is dead, and whose consent, or the consent of his personal representative or successor in title, cannot be obtained without undue expense or delay."

31. The interplay between these Rules and the principles set out by the Supreme Court in *Fitzgerald* was addressed in two subsequent cases. In the first of these, *In re Fairbairn* (1941) 75 ILTR 4, the applicant had obtained a default judgment against one John Fairbairn on 16th March 1939. He registered the same as a judgment mortgage against a property in Co. Cavan which he believed to be owned by the judgment debtor. His judgment mortgage was, however, cancelled on the grounds that the lands in question had been transferred by John Fairbairn to his cousin, Albert Fairbairn, on 26th March 1939, i.e. ten days after the judgment had been obtained, and his cousin had been registered as the owner of the same on 27th March 1939. The applicant asserted that the transfer was *not bona fide* but had been effected in order to prevent him executing on foot of his judgment and he sought leave to inspect and to take copies of the relevant documents. Maguire P. said:

"The circumstances under which this application is made are so closely akin to those *In re Fitzgerald* ... that, unless the effect of that decision has been limited by Rule 187 of the Land Registry Rules of 1937, it is a simple matter to apply here the principles laid down by the Supreme Court in that case."

32. Maguire P. then continued thus:

"Mr. Hamill suggests that it might be argued that the Rule was designed to get rid of the decision in *In re Fitzgerald* . . . In my view this rule merely operates to protect the Registrar from frivolous and ill considered requests for inspection of documents. It only alters the position as it existed at the time that the case was decided by requiring that applications for inspection of documents save in the cases mentioned in the Rules should be made to the Court. It in no way alters the principles which must guide the Court in considering such an application. I hold that the applicant has established that he has interest sufficient to entitle him to inspection."

33. For completeness, it may also be recorded that Maguire P. granted a similar order later in *In re Nolan* (1941) 75 ILTR 56. Here the applicant had been a creditor of the former registered owner, John Nolan, who had executed a settlement in respect of the property in question in order, the applicant suspected, to put the same beyond his reach. Referring to *Fitzgerald* and *Fairbairn*, Maguire P. granted the application.

34. It seems clear, nevertheless, that since 1937 the Land Registration Rules have sought to curtail the general right of access to the

register. As McAllister, *Registration of Title* (Dublin, 1974) observed (at 314) in the context of the (substantially identical) Rule 188 of the Land Registration Rules 1972:

“Rule 188 now clearly limits further the right to inspection. Notwithstanding the decision *In re Fitzgerald*, supra, it is submitted that a man’s title deeds are his private property so that no one except those with a genuine interest should be allowed inspection of them and that efforts of would be litigants, curiosity mongers and mischief makers should be discouraged as much as possible.”

35. One can sum up these developments by saying that whatever may have been the situation in 1925 when *Re Fitzgerald* was decided, every iteration of the Rules since 1937 to 2012 has, in one shape or another, endorsed the general confidentiality of the land registry system, subject to appropriate exceptions. Cases such as *Fairbairn* and *Nolan* are examples of this, as in both instances the applicants suspected that judgment debtors had sought to transfer lands for the purpose of avoiding creditors and sought access to the Land Registry files for the purpose of ascertaining the true state of affairs of the judgment debtor. The real question in the present case is whether the *bona fides* of the present applicants can be said to parallel those of the applicants in those cases such as that it might be said that they have a genuine and legitimate interest in accessing the instruments held on the relevant Land Registry Folio.

Whether the applicants have established the existence of “special circumstances” within the meaning of Rule 159(9) of the 2012 Regulations

36. There was no debate before this Court as to the extent to which the High Court or this Court should (if at all) defer to the views of the PRA in relation to the issue of what constituted special circumstances for the purposes of Rule 159(9) of the 2012 Rules. I would accordingly leave over that issue for determination to another and more suitable case.

37. I would nevertheless view the decision of the PRA as in substance one of interpretation of the “special circumstances” provisions of Rule 159(9) of the 2012 Rules. Issues of interpretation of this kind are, ultimately, “solely a matter for the courts” and it is no answer to say that the courts can interfere only where the interpretation adopted by the relevant statutory body “is wholly irrational” or otherwise unreasonable: see *Shannon Regional Fisheries Board v. An Bord Pleanála* [1994] 3 I.R. 449, 456, per Barr J.

38. The Authority appear, in effect, to have stated that the immediately previous registered owner of the lands is not entitled – or, at least, not generally entitled – to have access to the dealing instrument whereby the lands in question were transferred by a third party i.e. registered owner of a charge and that such do not constitute “special circumstances”. While it may be admitted that these particular words do not readily lend themselves to precise definition, I think that the categories of special circumstances must nevertheless be understood by reference to the underlying objectives of the 2012 Rules.

39. The key objective here is to safeguard the confidentiality and privacy interests of the landowner. This, after all, was the significant change effected by the 1937 Rules and repeated in all subsequent versions of the Rules. But the 2012 Rules also acknowledge that there may be a category of person with a legitimate interest in a particular dealing and, accordingly, the Registrar is permitted to permit access where such special circumstances have been established.

40. In the present case Cloughvalley (and, by extension, the Quinns on behalf of the company) is entitled to know the precise manner by which its lands were sold to a third party. It has a legitimate interest in securing this information, just as the applicant judgment creditors in *Fairbairn* and *Nolan* were entitled to ascertain the details of dealings by judgment debtors with their own lands. I consider Cloughvalley was entitled to obtain the document retained by the PRA as part of the public register and in the circumstances of this case it cannot be said that the legitimate privacy interests of the purchasers would accordingly be compromised, such as would normally be the case if any application were to be made by a curious third party with no legitimate interest in the matter. To that extent, therefore, I consider that, with respect, Abbott J. fell into error in suggesting that because the relevant copy of the dealing instrument might be obtained (by way of discovery, if necessary) in the other pending proceedings against AIB that the applicants had not on this account established the existence of special circumstances.

Conclusions

41. In conclusion, therefore, I consider that as the Quinns (on behalf of Cloughvalley the prior registered owner) had a legitimate interest in securing the instrument whereby the lands of the company were transferred by the registered chargee to a third party, I consider that they have established “special circumstances” within the meaning of Rule 159(9) of the 2012 Regulations.

42. I would accordingly allow the appeal and direct the PRA to provide Mr. and Ms. Quinn with a certified copy of the relevant dealing instrument, subject to the payment of the appropriate fee (if any).