

THE HIGH COURT

[2014 No. 2793 P]

BETWEEN

THOMAS MCCORMACK

PLAINTIFF

AND

MAYO COUNTY COUNCIL

DEFENDANT

JUDGMENT of Ms. Justice Murphy delivered on 20th day of October, 2016.

1. The plaintiff's claim in these proceedings is for a declaration that the defendant unlawfully and unconstitutionally dispossessed him of his family home at No. 1 Parkview, Charlestown, Co. Mayo on or about 16th January, 2010 and that following the said dispossession, his personal property and all his worldly goods were destroyed. In addition he claims damages for injury to his physical health and for stress.

The Proceedings

2. The plaintiff is a lay litigant who issued a plenary summons on 27th February, 2014, some four years after the alleged events giving rise to his claim. An appearance was entered by the defendant on 14th March, 2014. A statement of claim was delivered on 28th August, 2014 in which the plaintiff claims a breach of his constitutional rights, for which breach he claims general damages, including damages for personal injuries, and special damages estimated at almost €500,000.00 arising from a loss of goods. A defence was filed on 5th November, 2014 in which the defendant denies that the plaintiff had been unlawfully deprived of possession of the premises or of access to his personal property. The defendant specifically pleads that the plaintiff was given every opportunity to remove his possessions from the premises and denies that the plaintiff has suffered loss or damage as alleged or at all.

3. Arising from the contents of the statement of claim, the defendant raised interrogatories, to which the plaintiff replied on 22nd September, 2015. The interrogatories and the replies thereto are as follows:-

"(1) Were you informed in 2008 and November 2009 of the planned regeneration and refurbishment of the Parkview Estate, Charlestown Co Mayo?"

Answer: No.

(2) Were you informed by the Defendant in 2010 that you would have to vacate your premises at No. 1 Parkview, Charlestown, Co. Mayo during the refurbishment project?"

Answer: No.

(3) Were you offered alternative accommodation at No 4 Cois Halla, Charlestown on 29th January 2010 and in or about the 1st February, 2010?"

Answer: Yes, but this was not acceptable to the Plaintiff, in circumstances where the Plaintiff had expended large sums on the property at Parkview Estate.

(4) Did the Council offer to transport your belongings to proposed alternative accommodation?"

Answer: The Defendant offered to transport my belongings to Cois Halla, Charlestown, which was, in all the foregoing circumstances unacceptable to the Plaintiff.

(5) Did you refuse the alternative accommodation offered?"

Answer: Yes, because as a result of the actions of the Defendant, the Plaintiff was made homeless.

(6) Did the Council pay for B&B accommodation in the period before you left for the UK in February 2010?"

Answer: Yes.

(7) Did you refuse further offer for social housing support at No. 16 Parkview, Charlestown Co Mayo made to you by the Defendant in December 2012 and January 2013?"

Answer: Yes, due to the actions of the Defendant which occasioned irreparable loss and damage to the Plaintiff."

4. Notice of trial was delivered on 15th October, 2015. The booklet of pleadings provided to the Court contains a further statement of claim dated 31st August, 2015 in which the plaintiff frames his claim in contract, negligence, breach of duty and breach of fiduciary duty. This draft statement of claim which is stated to have been delivered by an "Aidan McCormack, plaintiff", does not appear to have been filed in court, nor has the Court been furnished with any order giving leave to amend the original statement of claim, nor has the defendant pleaded to this alternative statement of claim. In these circumstances, the second "statement of claim" has no status and the Court therefore proposes to deal with the plaintiff's claim as pleaded on 27th February, 2014 and his statement of claim dated 28th August, 2014.

Nature of the Claim

5. The plaintiff sues the defendant as housing authority for the Mayo area. At para. 3 of his statement of claim he pleads (and the defendant accepts) that on 6th March, 2006 he executed a caretaker's agreement with the defendant for the premises "I Parkview, Lowpark, Charlestown, County Mayo" and entered into possession of the premises. At para. 4 he sets out the alleged wrong perpetrated by the defendant and pleads:-

"On or about the 16th January 2010 the Defendant boarded up the Premises, changed the locks and cut off the water supply and unlawfully deprived the Plaintiff of possession of the Premises and access to his personal property and all of his worldly goods. The Defendant later disposed of the Plaintiff's personal property and his worldly goods without notice to or permission from the Plaintiff. "

This is the essence of the plaintiff's complaint.

6. In the particulars pleaded, he expands on his complaint and states:-

"The Defendant boarded up the Premises on or about the 16th day of January 2010, whilst the Plaintiff was detained in hospital for further medical treatment. The Defendant had been informed that the Plaintiff was in hospital but made no attempt to contact him prior to boarding up the Premises.

The Plaintiff was released from hospital on or about the 30th January 2010. He discovered that the Premises had been boarded up, the locks changed and the water supply to the Premises cut off when he went to return home that day. On enquiry, the Plaintiff was advised by the Defendant that a leak had been discovered at the Premises and that this was the reason for their actions. The Plaintiff was advised to go and stay with relatives or friends. No indication was given to the Plaintiff as to when the Premises would be repaired. No set of keys for the new locks to the Premises was issued to the Plaintiff. When the Plaintiff was unable to find alternative accommodation, he so advised the Defendant and he was put up in a Bed and Breakfast for two weeks at the Defendant's expense. No further attempt was made by the Defendant to accommodate the Plaintiff or to communicate with him. His goods were disposed of and no attempt was made to compensate the Plaintiff for his loss. The rent paid by the Plaintiff since the commencement of the tenancy in the amount of €619.50 was refunded by the Defendant to the Plaintiff by cheque dated 22nd day of December 2010 containing the reference "Refund-Rent" without further comment."

7. On the basis of these alleged facts the plaintiff maintains that his constitutional rights have been breached by the defendant and he pleads specifically a breach of Article 40.5 of the Constitution which states:-

"The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law".

He further relies on Article 43.1.1 of the Constitution which states:-

"The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods".

8. Having pleaded particulars of alleged personal injuries and alleged special damages of almost €500,000, the plaintiff claims damages including punitive damages and costs.

9. In its defence to this claim the defendant denied the account of events pleaded by the plaintiff and positively asserted its version of the engagement between the parties. The defendant denied any breach of the plaintiff's constitutional rights and denied loss or damage.

10. In its defence, the defendant raised no issue as to the appropriateness of the plaintiff's claim of a constitutional tort. The Court however on the facts as pleaded does have concerns that it is not open to the plaintiff to maintain such an action.

Constitutional tort

11. There is no doubt that a plaintiff whose constitutional rights have been infringed can in principle sue for such a breach. Such a right has been clear in our jurisprudence since the case of *Meskeel v. C  ras Iompair   ireann* [1973] I.R. 121. However, it is also established in our law that recourse can only be had to a constitutional remedy where existing law is ineffective to protect the constitutional right in issue (see the judgment of Henchy J. in *Hanrahan v. Merck Sharpe & Dohme (Ireland) Ltd* [1988] I.L.R.M. 629. It seems to the Court that on the facts alleged the law is replete with established remedies for any wrong allegedly suffered by the plaintiff. The Court has in mind, the law of trespass, contract, detinue, bailment and negligence, all of which are capable of providing a remedy for the wrongs alleged by this plaintiff. It cannot therefore be said that this is one of those cases in which if the facts alleged are proved, the Court would have to fashion a remedy in constitutional tort in order to grant relief to the plaintiff.

12. That said, bearing in mind that the defendant has not demurred or raised any objection to the nature of the plaintiff's claim, the Court proposes to approach the case on the basis that if on the evidence the Court is satisfied that the plaintiff is entitled to a remedy, then the plaintiff should not be shut out from access to that remedy by virtue of a failure to plead his claim appropriately.

The Evidence

13. The Court heard evidence from the plaintiff; Mr. Michael Munnelly, revenue collector for Mayo County Council; and Mr. Paul Benson, senior executive officer of Mayo County Council. There were many gaps and inconsistencies in the plaintiff's evidence but insofar as the Court has been able to ascertain from the totality of the evidence heard, the following appear to be the facts of this case:-

14. The plaintiff, who is a man in his sixties, grew up in the United Kingdom. He is of Irish extraction and his family own lands at Sonnagh, Charlestown, Co. Mayo. He returned to Mayo sometime prior to December, 2005 with an intention, *inter alia*, of developing the family farmlands. It appears that in or about 18th December, 2005 the plaintiff suffered serious injuries in a road traffic accident for which he was admitted to Mayo General Hospital. According to the plaintiff's evidence he was detained initially in Mayo General Hospital and thereafter in a convalescent facility in Swinford, Co. Mayo. At the time of his accident, he was living in private accommodation at Chapel Street, Charlestown, Co. Mayo. Because of what were apparently complex medical needs, the Court has been told that the premises he was then occupying were deemed unfit for habitation by him, by a medical social worker. This has not been disputed by the defendant.

15. As a result it is common case that on 6th March, 2006, the plaintiff entered into a caretaker's agreement with the defendant in respect of premises at No. 1 Parkview, Charlestown, Co. Mayo. The caretaker's agreement is a brief agreement and it provides as follows:-

"Caretaker's Agreement

I Thomas McCormack, of The Caravan, Sonnagh, Charlestown Co. Mayo do hereby acknowledge that I have been put in

possession of a dwellinghouse at no. 1 Parkview, Charlestown, Co. Mayo, the property of Mayo County Council as Caretaker by and for Mayo County Council, and that I am in possession of the said property solely as such Caretaker and not under any Contract of Tenancy,

AND I hereby further acknowledge that I have undertaken and agreed with Mayo County Council to take over the said property and to preserve same from trespass and injury and to deliver up possession thereof to the County Council, it's [sic] successors and assigns when required to do so."

The agreement is dated 6th March, 2006. It is signed by the plaintiff and is witnessed by two persons, one whose name is illegible and the other appears to be Clodagh Gleeson. The plaintiff alleges and it is not disputed by the defendant that he was allowed a six week rent free period in respect of repairs and improvements carried out by him to the property when he took possession of same.

16. No. 1 Parkview was part of a scheme of 42 houses. Most of the houses were built in the 1970s and 1980s. Eight of the houses in the scheme were built in the 1990s. While the houses constructed in the 1990s were deemed to be in good condition, the thirty-four older houses were considered to have been badly designed and to be in need of major redevelopment.

17. In 2008, Mr. Paul Benson, senior executive officer of Mayo County Council, submitted an application to the Department of Environment, Heritage and Local Government for €2.2 million for the purpose of refurbishing the Parkview estate. The application was approved. Thereafter, the defendant engaged in extensive consultation with the residents of the estate about the planned refurbishment. In March, 2009 approximately fifteen residents including the plaintiff attended the first public meeting at which the plans for refurbishment were outlined. They were informed that the eight modern houses would not be refurbished; that seven (later eleven) houses would be demolished; that four new houses would be constructed and that the remainder would be fully redesigned and refurbished.

18. In March and April, 2009 Mr. Benson held one-to-one meetings with residents including the plaintiff on a number of occasions to listen to their suggestions and concerns regarding the planned refurbishment. The plaintiff engaged in this process at some stages but at other times opposed the scheme.

19. The plan envisaged the relocation of the majority of residents during the refurbishment and redevelopment of the estate. The defendant gave evidence that most of the residents were housed in private rental accommodation during the refurbishment and redevelopment and that the defendant provided funds to cover any additional expense of such accommodation. The process of relocation appears to have taken place during the year 2010.

20. Mr. Benson gave evidence and the Court accepts that he engaged in discussions with the plaintiff in September, October and November, 2009 in relation to the refurbishment plans. On or about 8th September, 2009, Mr. Benson visited the plaintiff in response to a postcard from him inquiring about the start date for the refurbishment works. Their conversation centred on the relocation of the plaintiff during redevelopment and refurbishment. Three options were discussed. The first was that the plaintiff could go into private rental accommodation; the second was that he could move to accommodation at another council property; and the third was that the defendant could build a demountable dwelling for him on his family lands at Sonnagh, Charlestown, Co. Mayo. While the options were discussed, according to the evidence no decision was taken at that meeting.

21. Six days later, the plaintiff wrote to the defendant a letter dated 14th September, 2009. In it, he rejected the defendant's offer to build a demountable dwelling on his family lands at Sonnagh, Charlestown. He suggested instead that the defendant purchase another property adjacent to his family lands for his use. The letter as sent reads as follows:-

"Dear Paul,

Thank you for your time on Thursday 10th September. I would like to thank you for your suggestion of demountable dwelling to be allocated to my land. However having given this proposal considerable thought.

I am not prepared to live in a demountable dwelling due to contributing factors which include, dwelling security, position of proposed dwelling being too close to the road, and health issues please see enclosed letter supporting this.

However, I would like to recommend the purchase of the property, which is situated adjacent to my existing land, please review plans enclosed.

As you will see the accommodation is in a much state of repair than any of the structures on my land. Included on the site is a natural spring, which would adequately supply me all my water needs.

It strikes me that the renovation of suggested building would be less costly and more appropriate for the local landscape.

Regards

Thomas McCormack"

22. In a response dated 7th October, 2009 the defendant explained to the plaintiff that it was not in a position to purchase the property recommended by the plaintiff. The defendant further noted the plaintiff's refusal of the defendant's offer to build a demountable dwelling on his family lands in Sonnagh, Charlestown.

23. The evidence is that in the course of these discussions about the relocation of the plaintiff during the refurbishment works, the plaintiff made an offer to purchase No. 1 Parkview, Charlestown, Co. Mayo. Mr. Benson gave evidence that the defendant refused that offer on the basis of housing policy. He explained that the one/two person properties in the Parkview estate are not available for sale as there is a recurring demand for such properties.

24. In early November, 2009 the plaintiff informed the defendant that he was going into hospital in London on 17th November and that he could be away for a lengthy period of time possibly up to nine months for treatment of various complex medical conditions from which he was suffering. The evidence is that on or about 4th November, 2009, on receipt of this information Mr. Benson rang the plaintiff to advise that if he was away for such a protracted period, it was likely that the Council would have to take over possession of the dwelling in his absence to facilitate the commencement of the work by the contractor engaged to carry out the refurbishment work. These were due to commence in early 2010. The evidence is and the Court accepts, that the plaintiff was told that in the

event that it was necessary to take possession of the dwelling in his absence his belongings would be put into storage. He was reminded that he had a caretaker tenancy only. He was also told that alternative accommodation would be provided for him on his return. The plaintiff left in mid-November and upon leaving did not provide to the defendant a forwarding address, a telephone number or an email address at which he could be contacted during his sojourn in the United Kingdom. In his evidence the plaintiff initially maintained that he had never been told that there would be a need to carry out internal works at No. 1 Parkview or that vacant possession would be required. However, he later conceded in his evidence that he had been so informed.

25. The plaintiff gave evidence that on leaving for the United Kingdom he paid a neighbour to watch over the house in his absence. He did not inform the defendant of this arrangement. Many of the difficulties that ensued may well have arisen, in the Court's view, from what the plaintiff described as a "*breach of trust by the neighbour*".

26. The plaintiff alleges that his property was broken into shortly before Christmas, 2009. The evidence suggests that there was an anonymous phone call reporting the alleged break in to the defendant. The evidence suggests that the gardaí also informed the defendant of a similar report made to them. The defendant was unable to contact the plaintiff as it had no contact details for him other than his original address at No. 1 Parkview. The plaintiff contends that it was the neighbour who he had paid to look after the house, who had broken into the house and switched on the electricity and water supply. On inspection by the defendant in January, 2010 there was no sign of a break in at the house and so, the Court infers that if the formerly trusted neighbour did get access to the house, it was by means of a key furnished to him by the plaintiff.

27. There was a severe cold spell at the end of 2009/early 2010 and due to concern that pipes would burst in the thaw following that severe cold spell the defendant visited all vacant stock in January, 2010. The plaintiff's house at No. 1 Parkview was visited for this reason and also because of the earlier report of a break in. On 12th January, Mr. Benson and a tradesman visited the plaintiff's property. They forced entry through the front door. The hallway of the dwelling leads to three interior doors. All three according to Mr. Benson were locked. There was no indication of a break in. On inspection the coal shed/laundry room behind the house had the appearance of being locked but was in fact open. On entering the house Mr. Benson and the tradesman could hear the sound of water and they broke into the bathroom where a water leak was discovered. The water tank was emptied and the water and electricity were switched off. The locks of the house were changed and the house was boarded up for security and insurance reasons.

28. According to Mr. Benson he directed Ms. Joan Gavin, staff officer of the defendant County Council to post a notice to the door of the house to alert the plaintiff on his return, to contact the defendant and that she did so on 14th January, 2010. The plaintiff disputes that any such notice was affixed to the property. A copy of the notice has been produced to the Court and the Court accepts the evidence that the notice was affixed to the front door of the property, though it may well be that by the time of the plaintiff's return more than two weeks later, the notice was no longer present.

29. On Thursday 28th January, 2010, the plaintiff returned to Mayo from England to discover that his house had been boarded up and the locks changed. The plaintiff used his neighbour's telephone to ring the defendant. Presumably, this was the neighbour to whom he had entrusted the care of his property during his absence. Mr. Michael Munnely a revenue collector with the defendant working out of the Swinford area office answered the telephone and he arranged bed and breakfast accommodation for the plaintiff in Charlestown for that night. According to the evidence of Mr. Munnely he informed the plaintiff that there had been a major water leak in the property and that the water and electricity had been shut off. Mr. Munnely gave evidence that he did not tell the plaintiff of the earlier reports of a break in. However, the Court does not consider that this was a matter of great significance in circumstances where upon the inspection of the property on 12th January, 2010 by the defendant, there was no evidence of any break in.

30. According to the evidence of Mr. Munnely and to the memorandum signed by him and Joan Gavin, staff officer, the plaintiff was advised to contact the office on Friday 29th January. The evidence is that he did not do so. Mr. Munnely and Ms. Gavin travelled to Charlestown in an effort to meet Mr. McCormack and eventually managed to contact him by telephone. According to the evidence of Mr. Munnely and the memorandum prepared by him and Ms. Gavin, in the course of the telephone call with the plaintiff he was offered a full tenancy of a council apartment at No. 4 Cois Halla, Charlestown. When the plaintiff objected that he would be unable to move because he was physically unfit due to his medical condition the evidence indicates that he was told that Mayo County Council would assist him in moving his belongings to No. 4 Cois Halla. The plaintiff refused this offer made over the telephone.

31. On the following Monday, 1st February Mr. Munnely and Ms. Gavin called to the B&B where the plaintiff was staying to give him the formal offer of council accommodation at No. 4 Cois Halla. As the plaintiff was not present they left the letter of formal offer with the proprietor for him.

32. On the following day Tuesday 2nd February, 2010, there was a telephone call from the plaintiff's then solicitors, P. O'Connor and Son, seeking access to the house for the purpose of retrieving personal belongings. Mr. Munnely arranged to meet the plaintiff on the following day, Wednesday, 3rd February at his residence to facilitate access.

33. On 3rd February, 2010, Mr. Munnely and Ms. Gavin met with the plaintiff at the house. The offer of a tenancy, as opposed to a caretaker's agreement, at No. 4 Cois Halla was repeated to the plaintiff together with an offer to transfer his belongings there. The plaintiff rejected the offer and inquired whether it would be possible for the defendant to move his belongings to his family's land at Sonnagh, Charlestown instead. Mr. Munnely told him this would not be possible. He explained in his evidence that the transfer of belongings from one council accommodation to another is covered by insurance whereas the transfer from council accommodation to private accommodation which was not being provided by the council, is not covered. The plaintiff was given access to the house and he removed a number of possessions. The plaintiff gave evidence that he stored some of his belongings in the coal shed/laundry room located at the back of No. 1 Parkview. Mr. Munnely gave evidence that he was unaware that the plaintiff had done so. As the plaintiff was due to return to the United Kingdom for further medical treatment in the short term, Mr. Munnely requested that the B&B make a room available for the plaintiff until his return to the United Kingdom.

34. On 9th February, 2010, the plaintiff returned to England for further medical procedures and the defendant discharged the cost of his B&B in Charlestown.

35. Although the correspondence provided to the Court does not seem to be complete, the Court has been given a letter sent by the Director of Services of the North East Region of Mayo County Council dated 26th February, 2010 to the plaintiff's then solicitor (P. O'Connor and Son), which advised the solicitor that the plaintiff had been offered full tenancy at No. 4 Cois Halla; that the defendant had covered the cost of a B&B for twelve nights from 28th January to 8th February inclusive to allow the plaintiff time to consider the offer; and that consequently the defendant would not be covering the cost of B&B on any future occasion. The letter went on to assert that the defendant had fulfilled its statutory obligation to the plaintiff through the offer of council accommodation at No. 4 Cois Halla. The letter finished by reminding the solicitor that the plaintiff was only a caretaker tenant of No. 1 Parkview, and that he was

being offered a full tenancy at No. 4 Cois Halla.

36. The Court has been provided with a letter from the plaintiff's solicitor which appears to be a response to that letter of the 26th February, 2010. Whilst the letter bears the date 14th February, 2010, the Court's best estimation is that it was in fact written on 14th April, 2010 as it is stamped as being received by the defendant on 16th April, 2010. The letter refers to the Director of Services letter of 26th February, 2010 and states:-

"Please note our client has confirmed today to the writer that he is willing to accept a full tenancy of a council dwelling at 4 Cois Halla, Charlestown, County Mayo on the basis that his washing machine and shelving that he had at No 1 Park View will be installed at your expense at No 4 Cois Halla.

Please confirm by return that this accommodation is still available to our client as he is due to return to Mayo from Dublin on Monday next the 17th instant."

37. The Court notes that in fact the following Monday was 19th April. There is a note at the bottom of the solicitor's letter stating "Joan Gavin SO – this is fine. Arrange carriage with John Walsh". One might have hoped and anticipated that this would conclude matters. However, in evidence the plaintiff claimed that he never instructed his solicitor to send that letter. The Court has had no evidence from the solicitor.

38. In April, the plaintiff returned to Mayo. He did not take up the offered tenancy at No. 4 Cois Halla. He either lived in B&B accommodation or in a converted mini-bus/ambulance on his family's land at Sonnagh. His evidence is that around this time, April 2010, he discovered that the possessions which he left in the coal shed/laundry room at the back of No. 1 Parkview on 3rd February were no longer there. His evidence is that he learned this in the course of a conversation with the neighbour with whom he had formerly been friendly and to whom he had entrusted the care of his house in his absence. This neighbour apparently indicated to him that he "would need to get a new laptop".

39. The evidence is that this conversation resulted in a falling out between the plaintiff and his erstwhile friendly neighbour. It appears to have given rise to an incident on 14th June, 2010 between them which resulted in a criminal complaint being made against the plaintiff. In turn, this gave rise to bail conditions being set which required, *inter alia*, that the plaintiff not attend certain places in Charlestown. The plaintiff states that he made a complaint of theft to the gardaí in respect of the missing items. The Court accepts that he may well have done so but the Court notes that documentation provided to it suggests that there is no record of a reported theft of his property either in Charlestown or Swinford Garda Station.

40. Also on 14th June, 2010, the plaintiff attended the monthly County Council chambers meeting. The defendant's account of the meeting is that the plaintiff spoke with Mr. Benson informing him that he was homeless and that his possessions were missing. He alleged that his neighbour had broken into the property. The plaintiff enquired about compensation for work he had carried out on the property. Mr. Benson discussed the offer of accommodation at No. 4 Cois Halla with the plaintiff and advised him to accept it. The plaintiff's version of this meeting is somewhat different and is contained in an email with an address hungerireland@gmail.com dated 19th June. The plaintiff contends in this email that the first he knew that his house had been broken into by his neighbour was when he was so informed by Mr. Benson. Both accounts agree that Mr. Benson's position was that the plaintiff should accept the accommodation being offered to him on a full tenancy basis at No. 4 Cois Halla.

41. On 18th June, 2010, the plaintiff's solicitor again wrote to Mr. Benson and on this occasion indicated that his client had advised that he would not accept the offer of accommodation at No. 4 Cois Halla. The letter states:-

"As you are aware our client has advised that he will not accept the offer of No. 2 Cois Hala [sic] as alternative accommodation to No. 1 Parkview, Charlestown County Mayo.

He has instructed us to write to you in relation to this matter.

There has been a further development in that our client was recently arrested in circumstances where it is alleged he caused criminal damage. The investigation is pending and as part of his bail conditions he has to stay away from Lavey Manor estate and St. Josephs Secondary School in Charlestown.

In the circumstances our client has requested that he be given alternative accommodation to consist of a fully serviced demountable dwelling to be placed on his lands known as Fairyboxing Ring Farm, Sonnagh, Charlestown, County Mayo which would keep him out of Charlestown.

Our client has also advised us that a number of [h]is personal items to include a laptop were stored in a building to the rear of No. 1 Parkview and this building has been broken into on two occasions. As previously advised he had purchased a washing machine and other appliances for No. 1 Parkview and seeks return of same or preferably that same are installed in his new accommodation. Please arrange with this office for the property to be opened so that our client can retrieve all of his personal belongings.

As you are aware our client has returned from the U.K. and is currently at Green Bay B&B, the Mall, Castlebar at his own expense. Please confirm by return that our client will be refunded this rent in circumstances where he has not been afforded suitable alternative accommodation. He has also spent monies in his previous accommodation at No. 1 Park view and he has again requested that you confirm whether he will be reimbursed the said expense."

It is to be noted at this point that the plaintiff is now seeking a fully serviced demountable dwelling to be built on the his family lands at Sonnagh, Charlestown. This was an offer which had been made to him by the defendant in 2009 and which he roundly rejected in his letter of 14th September, 2009 stating that he was not prepared to live in a demountable dwelling.

42. According to a note on the solicitor's letter, the contents of the letter were discussed by Mr. Benson with Ms. Joan Gavin and a decision was made that rent which the plaintiff had continued to pay by standing order on No. 1 Parkview, be refunded from the date upon which the house had been boarded up. A cheque for €539 representing the rent from 4th January, 2010 was sent to the plaintiff's solicitors. The Court has not been supplied with the letter accompanying the cheque but it appears that it was a letter dated 1st July, 2010 because it is referred to in a letter dated 10th August, 2010 from the solicitors for the plaintiff. They wrote on that date to the defendant returning the cheque which the plaintiff had refused to accept. The letter went on to state that notwithstanding the solicitor's earlier letter of 18th June requesting a demountable dwelling be built at Sonnagh, Charlestown, the plaintiff had once again changed his mind and was no longer seeking such a dwelling.

43. In September, 2010 the plaintiff attended unannounced at the defendant's offices in Swinford and had a meeting with Mr. Munnely and Ms. Gavin. According to the evidence, the plaintiff was accompanied on that occasion by a friend who spoke on his behalf, as the plaintiff had temporarily lost the use of his voice.

44. At this stage the contractor for the refurbishment was due to go into possession of the estate. The plaintiff in his evidence ultimately accepted that he was aware of this at the time and that he took no steps to recover such possessions as belonged to him prior to the property being taken over by the contractor. He sought to explain his failure to do so as being due to his debilitated state by reason of his multiple medical conditions. When pressed by the Court, he accepted that notwithstanding his own inability to move his belongings, it would have been possible for him to arrange for others to do so on his behalf; he chose not to do so.

45. The contractor went into possession in September, 2010 and the house was cleared. As a matter of probability, the remaining contents were placed in a skip and removed. Mr. Benson gave evidence that it is not unusual for residents to leave belongings in a vacated house and that it is normal practice for these items to be put in a skip. Mr. Benson contends that the plaintiff was fully aware of the intended refurbishment and that he had ample opportunity between January, 2010 and September, 2010 when the contractor took possession of the estate, to remove his belongings but failed to do so.

46. During his evidence the plaintiff produced to the Court a purported inventory of the contents of the three roomed house which he occupied at No. 1 Parkview, Charlestown. That one small house could contain all which he claims it contained is in the Court's view incredible. By way of example, the items variously claimed to have been in the plaintiff's coal shed are as follows:-

4 push bikes; 1 side car for bike; 1 handmade box; 1 Honder Jenny; 1 washing machine; 1 washer/dryer; washer and dryer plumbing; 3 rolls of 13 amp cable; 1 foston for light; 1 box of 110 V light bulbs; 1 light; 1 heater; 1 frost stat; 1 water tap; 8 double 13 amp plugs; 1 workman; 1 petrol can; 1 jerry can; 4 shelf brackets; 3 VD right; 2 army sleeping bags; clad roof and insulation; walls and floor paint; bike tool pump spanner; two canvas tool boxes with plumbing and bike tools; 1 bit box and drill bits; 1 hilty fixing kit & box; 1 pair of Doc Marten boots; 1 pair of rubber boots; 3 electric fences; 6 rolls of electric fence; 100 1.5m bar and insulation; 1 large crowbar; 1 crowbar; 1 small axe; 1 161 D hammer; 1 81 D hammer; 1 Christmas tree in box; 1 box of Christmas decorations; 3 old brass flow torch.

Having regard to the multiplicity, size and variety of items allegedly stored in the coal shed, one can only wonder how the plaintiff managed to get access to the washing machine to do his washing.

47. Similar lists of items have been produced by the plaintiff in respect of the contents of the three rooms of the dwelling. Among the list of items there are two claims in respect of cash, one for €2,000 and the other €4,760. Interestingly the plaintiff made no reference to any such cash sum in the course of his evidence. The Court on the evidence is satisfied that the contents of No. 1 Parkview were not as claimed by Mr. McCormack. As already stated the list is extensive and it is difficult to envisage the size and volume of items claimed being contained in a small one bedroom house. The full list, some of which has been listed above, runs to 18 pages in length. While the plaintiff denies that he instructed his solicitor to write a letter accepting a tenancy in No. 4 Cois Halla in April, 2010, the fact is that the only items of personal belongings referred to in that letter were shelving and a washing machine. The Court therefore is not persuaded that the contents were as extensive as claimed and secondly, even if the Court is wrong in that conclusion, the Court holds that any loss arising stems from the plaintiff's own actions, on the ground that despite being afforded ample opportunity to remove such property from the dwelling, he failed to do so.

48. Following the commencement of the refurbishment works, the defendant continued to urge the plaintiff to accept the offer of a tenancy at No. 4 Cois Halla. In December, 2010, the defendant issued a further refund cheque to the plaintiff for €619.50 in light of the fact that the plaintiff was not then in occupation of council accommodation. The plaintiff has chosen not to cash the said cheque.

49. At some point the plaintiff moved back to his family lands at Sonnagh, Charlestown and moved into a converted ambulance type vehicle on the lands.

50. In December, 2012, the Court is satisfied that the plaintiff was offered accommodation in his former dwelling once refurbishment was completed. That dwelling is now No. 16 Parkview. On 7th January, 2013, the defendant sent the plaintiff a further letter offering him a tenancy of No. 16 Parkview. Notwithstanding those offers the plaintiff launched the within proceedings on 27th February, 2014. At the date of this hearing the offer of a tenancy at the vacant No. 16 Parkview property remained open to the plaintiff

Decision of the Court

51. On the basis of the evidence and facts as found by this Court, the plaintiff has no sustainable claim against Mayo County Council either in tort, contract or pursuant to constitutional rights. As stated earlier the essence of the plaintiff's claim is that he was unlawfully deprived of possession of No. 1 Parkview, Charlestown, Co. Mayo. The plaintiff as a caretaker, acknowledged that he had no contract of tenancy in the property and further acknowledged that he would deliver up possession of the property when required to do so. Prior to leaving the jurisdiction in November, 2009 for an indeterminate period, he was specifically informed that in his absence the defendant might need to take possession of the property in order to facilitate the refurbishment works of which he was well aware. In the event that that became necessary the defendant informed him that it would put his belongings in storage. On leaving the jurisdiction, he left no forwarding address, email or telephone number, nor did he inform the defendant that he had entrusted the care of the dwelling to a neighbour with whom he was friendly. It could indeed be claimed but has not been, that by rendering himself un-contactable he had in effect abandoned the property. The defendant had no means of notifying him when a report of a break in was received and when concerns about a leak in the property emerged. It would have been a gross dereliction of duty by the defendant were it merely to stand by and allow a potential leak to wreak havoc on the property until such time as the plaintiff deigned to return. The Court is satisfied that the defendant as owner of the unoccupied property was fully entitled to effect entry on 12th January, 2010. On doing so, there was no sign that the property had been broken into, contrary to reports given to the gardaí and the County Council. The external door and the three internal doors were locked. The Court is satisfied therefore that any person who gained entry to the property during the period of the plaintiff's absence had a key for the purpose of gaining access.

52. Having thus taken control of the property during the period of the plaintiff's absence and at a time when the plaintiff was in effect *incommunicado*, and bearing in mind that the property was required for the purposes of the refurbishment programme of which the plaintiff was on notice, the defendant was entitled to retain control of the property and did so while offering the plaintiff alternative accommodation on a tenancy basis as opposed to a caretaker basis. In early February, 2010 the plaintiff rejected the offer of alternative accommodation at No. 4 Cois Halla. Thereafter he returned to the United Kingdom. In April when he was again about to return to Mayo, his then solicitor sent a letter to the defendant confirming the plaintiff's willingness to accept a full tenancy of a council dwelling at No. 4 Cois Halla, Charlestown, Co. Mayo on condition that his washing machine and shelving from No. 1 Parkview would be installed at the defendant's expense. These terms were acceptable to the defendant. At the hearing of this case the

plaintiff sought to resile from the contents of that letter by maintaining that he never instructed his solicitor to write that letter. He did not take up the offer of a tenancy in No. 4 Cois Halla. In June, 2010, his solicitor wrote seeking a demountable dwelling to be built at the plaintiff's family lands at Sonnagh, a solution that had been offered to him nine months earlier and which he had roundly rejected. In August, 2010, his solicitors again wrote stating that he no longer wanted a demountable dwelling to be built at the family lands at Sonnagh. When the refurbishment of Parkview was completed, the plaintiff was offered a tenancy in the house which he formerly occupied as a caretaker. In these circumstances the plaintiff's assertion in his statement of claim that following the boarding up of the premises at No. 1 Parkview, no further attempt was made by the defendant to accommodate the plaintiff or to communicate with him is manifestly untrue.

53. The second element of the plaintiff's claim that the defendant deprived him of access to his personal property and all of his worldly goods is similarly unstateable. The Court is quite satisfied that from January, 2010 until September, 2010 when the refurbishment works began, access to his personal goods such as they may have been, was at all times available. On his first return from the United Kingdom at the end of January, 2010, he was given access to the property to retrieve personal belongings. He contends that he placed some of those belongings in a coal bunker/shed. He did so unknown to the defendant. It is true that the defendant did not inform him of the fact that there had been reports of a break in, but in the Court's view that is not surprising in circumstances where upon an inspection of the property on 12th January, 2010, there was no evidence that the property had been broken into. In February, 2010, the defendant offered to move his belongings to No. 4 Cois Halla but the plaintiff declined both the accommodation and the offer. He requested that his belongings be moved to the family lands at Sonnagh but it was explained to him that the defendant was only covered by insurance to move belongings from one council accommodation to another. It was of course entirely open to the plaintiff to arrange for the removal of his property himself. He declined to do so. In June, 2010, again through his solicitor, he requested access for the purpose of retrieving all of his personal belongings. He did not follow up on this request and his belongings, such as they may have been, remained in No. 1 Parkview. In September, 2010, at a time when he knew that the contractors were about to take possession of the estate he attended unannounced at the defendant's Swinford offices. When pressed by the Court he accepted that he knew that the contractors were about to take possession of the estate and further he accepted that it was open to him to remove his personal belongings before that event. He chose not to do so. For the reasons set out at para. 47, the Court is not persuaded that the contents were either as extensive or as valuable as the plaintiff has claimed and the Court also rejects the plaintiff's claim for loss of this property. Such rent as was paid by him pursuant to a direct debit from January to September, 2010, the period when he was not in occupation of No. 1 Parkview was returned to him but he has refused to accept it.

54. The Court has considerable sympathy for the officials of Mayo County Council who have had to deal with the plaintiff. They made all reasonable efforts to accommodate him in the light of a planned refurbishment of the entire Parkview estate, which refurbishment can only have been of benefit to the community of Charlestown as a whole and to the plaintiff individually. In September, 2009, he was offered a demountable dwelling on his family lands at Sonnagh. He refused this and rather arrogantly suggested that the Council might like to buy a neighbouring property for his use, which he considered more suitable. He declined an alternative tenancy in other council accommodation offered in January, 2010. In June, 2010 through his solicitor he asked for a demountable dwelling to be built on his family lands a suggestion he had rejected nine months earlier. Two months later, in August, 2010, he decided that such a dwelling would not be suitable after all. The plaintiff strikes the Court as a man who is extremely exercised by his "*entitlements*" but appears to have scant regard for his responsibilities. The Court is satisfied that the defendant dealt with him fairly, lawfully and appropriately, both in relation to his accommodation and to his personal property and any loss which he may have sustained is attributable to his own obstinacy in failing, refusing and neglecting to remove his property from No. 1 Parkview even though he was afforded ample opportunity to do so. For these reasons the Court dismisses the plaintiff's claim.