Neutral Citation [2012] IEHC 545

THE HIGH COURT

[2011 No. 4759 S]
[2012 No. 16 COM]

IN THE MATTER OF THE ESTATE OF JOHN O'MEARA (DECEASED)

BETWEEN

BANK OF SCOTLAND PLC.

PLAINTIFF

AND
RANDAL GRAY AND MARK EDMUND DOYLE

DEFENDANTS

JUDGMENT of Ms. Finlay Geoghegan delivered on the 14th day of December, 2012

1. This judgment is given on an issue which the parties agreed, in the course of the hearing of the plaintiff's application for summary judgment, should be determined by the Court as a preliminary issue. It was agreed this was permissible pursuant to O. 37, r. 7 of the Rules of the Superior Courts.

2. The issue to be determined is whether or not the proceedings, which issued on 18th November, 2011, are properly constituted and maintainable against the defendants.

3. The objection made to the validity of the proceedings is that the defendants are sued as administrators of the estate of Mr. John O'Meara, deceased, while the grant of administration to them only issued on 24th November, 2011, *i.e.*: after the commencement of the proceedings.

The Facts

4. During the life of Mr. John O'Meara, the plaintiff had advanced monies and otherwise provided banking facilities to him. It is alleged that these facilities stated that upon his death, principal and interest became immediately repayable.

5. Mr. O'Meara died on 27th November, 2009. He left a will appointing executors, Ms. Gaye Hillary and Mr. Tom McParland. They renounced their appointments on 2nd December, 2009.

6. On 5th January, 2010, the plaintiff purported to exercise a right of *lien* and set off in respect of two deposit accounts in the joint names of Mr. O'Meara and his wife, Mrs. Claire O'Meara. The monies were applied to reduce the sums due by the estate of the late Mr. O'Meara (the "Estate"). In June 2010, Mrs. O'Meara issued proceedings seeking declarations, *inter alia*, that the monies in the relevant accounts were her property. Those proceedings were determined by Laffoy J. on 28th October, 2011 [2011 IEHC 402] with a finding in favour of Mrs. O'Meara in respect of one of the accounts.

7. The deceased, at the date of his death, had significant investments in development property, both in Ireland and abroad, and extensive borrowings from a wide range of banks and credit institutions, including the plaintiff. There were multiple potential claims against the Estate. The question as to whether or not the Estate is insolvent has not been determined. Nothing turns on this for the purpose of the preliminary issue but it appears to have contributed to the delay in taking out a grant of administration.

8. Throughout 2010, there was correspondence between the plaintiff and solicitors acting for proposed administrators of the Estate. The original proposal was not pursued. In January 2011, a second firm of solicitors wrote to the plaintiff enclosing draft motion papers intending to apply for the appointment of other persons as administrators. That motion was not pursued.

9. Ultimately, in March, 2011, Actons solicitors, the solicitors now on record for the defendants in these proceedings, wrote to the solicitors for the plaintiff proposing that the defendants be appointed as administrators of the Estate. The second named defendant is a solicitor and member of that firm.

10. On 11th April, 2011, a motion was issued returnable for 16th May, 2011, seeking, *inter alia*, an order pursuant to s. 27(4) of the Succession Act 1965, granting the defendants letters of administration with will annexed to the Estate. That application was adjourned from time to time. ACC, to which it was alleged the Estate also had liabilities, objected, initially, to the appointment of the defendants. It contended the Estate should be administered in bankruptcy. The application to have the defendants appointed as administrators with will annexed was ultimately adjourned to 11th July, 2011.

11. In the meantime, on 6th July, 2011, the plaintiff issued a motion seeking to have a Mr. Eamonn Freaney appointed as administrator *ad litem* in relation to an intended claim against the Estate by Bank of Scotland, which is the claim sought to be pursued in these proceedings.

12. On 11th July, 2011, the High Court (Ryan J.) made an order pursuant to s. 27(4) of the Succession Act 1965. The order records that the Court was of opinion in the special circumstances of this case, "it is expedient to appoint some person to be the Administrator of the estate of the said deceased other than the person who under the Succession Act 1965, would be entitled to such Grant". The order then made was

> "That Randal Gray and Mark Doyle, the Applicants herein, be at liberty to apply for a Grant of Letters of Administration with will annexed in the estate of [John O'Meara, deceased]". The order also records that counsel for ACC Bank and the plaintiff herein were heard as notice parties. ACC Bank did not pursue its objection to the appointment of the defendants and the plaintiff did not object to the order made.

13. Subsequent to the order made by the High Court on 11th July, 2011, there were exchanges of correspondence between Actons, solicitors for the defendants, and Eversheds, solicitors for the plaintiff. There was undoubtedly confusion therein as to the status of the defendants in relation to the Estate. It is necessary to refer to certain of this.

14. On 14th July, 2011, Actons wrote to Eversheds enclosing a copy of the order of 11th July, 2011, but stating in the body of the letter that they were enclosing "a copy of the Order of the High Court dated 11th July, 2011, confirming that our clients were appointed as administrators of the estate of John O'Meara". The heading to that letter also refers to the defendants as "the Administrators of the estate of John O'Meara deceased".

15. On 12th September, 2011, Eversheds wrote a letter to the defendants as "administrators of the estate of Mr. John O'Meara" C/o Actons solicitors, making formal demand for the repayment of €14,997,912.20, together with interest in respect of specified facilities to the late Mr. O'Meara. The opening paragraph of the letter stated, "We act for Bank of Scotland plc. You have both been appointed as Joint Administrators of the estate of the late John O'Meara, by order of the High Court of Monday 11 July 2011".

16. Actons responded to that letter. It did not expressly contradict the contention that the defendants had been appointed as joint administrators by the order of the High Court of 11th July, 2011. However, in the heading to the letter, "Our Clients" are described as "Mark Edmund Doyle and Randal Gray as Proposed Administrators of the Estate of John O'Meara deceased". In the body of the letter, Actons referred to the letter of 12th September, 2011, and stated, "Please note that our clients are still accumulating information in relation to your letter and they shall be in contact with you shortly. We would be obliged if you could provide us with as much information as possible as to what security you believe is held over what specific assets. We look forward to hearing from you".

17. There is no evidence of any further communication between the parties or their solicitors from 26th September, 2011, until 18th November, 2011.

18. On 18th November, 2011, the summary summons herein issued. On the same day, Eversheds wrote to Actons, referring, in the title to their respective clients simply by name, and stating:

> "We refer to the above and we would be much obliged if you could confirm that you have authority to accept service of proceedings on behalf of your clients.
>
> We confirm that the Summary Summons has now issued (please find ***enclosed**** copy filed Summary Summons for your attention) and you might note that we have received instructions from our client to serve same immediately.
>
> If we do not hear back from you with confirmation that you have the authority to accept service of proceedings by 5.00pm on Monday 21 November 2011, we will proceed to serve your clients directly."

19. Actons responded to that letter on 18th November, 2011. In their title, they referred to their clients as 'Proposed Administrators of the Estate of John O'Meara, Deceased'. In the letter they stated:

> "1. We refer to the above matter and to your fax of today's date.
>
> 2. We write to confirm that this office has authority to accept service of proceedings on behalf of Mr. Doyle and Mr. Gray."

20. On 22nd November, 2011, the proceedings were served on Actons with the usual request for endorsed acceptance of service and a memorandum of appearance.

21. On 24th November, 2011, letters of administration with will annexed were granted to the defendants as stated therein "the persons appointed by the Court pursuant to section 27(4) of the Succession Act 1965, to be the Administrators with said will annexed of the estate of the said deceased". The grant prior to the signature of the assistant Probate Office states "By Order of Court dated 11 day of July 2011".

22. On 26th November, 2011, the two-year limitation period in s. 9 of the Civil Liability Act 1961, for commencement of claims against the Estate expired. It is not in dispute that the plaintiff had, at all material times, been conscious of the two-year limitation period and sought to have administrators appointed so as to issue and serve the proceedings prior to the expiry of same.

23. On 30th November, 2011, Actons responded to Eversheds, referring to the proceedings served on 22nd November, 2011, and indicating that they had "no difficulty in entering an Appearance in this matter". They sought certain documentation for the purpose of avoiding costs. That letter continues to refer to the defendants as "Proposed Administrators of the estate of John O'Meara deceased", notwithstanding that the grant had issued.

24. On 18th January, 2012, the plaintiff issued a motion seeking entry to the Commercial List, directions and summary judgment against the defendants.

25. On 26th January, 2012, an appearance was entered to the summary summons by Actons on behalf of the defendants.

26. On 27th January, 2012, an order was made admitting the proceedings to the Commercial List and the remainder of the motion adjourned to 27th February, 2012, for further directions. On 27th February, 2012, further directions were given, including an exchange of affidavits. Pursuant to those directions, the second named defendant delivered an affidavit sworn on 21st March, 2012, in which he raised, for the first time, the issue as to whether or not the proceedings are properly constituted by reason of the fact that the defendants were not the administrators of the Estate, on 18th November, 2011, the date of issue of the summary summons.

27. At the hearing of the application for summary judgment on 26th June, 2012, one of the issues raised as a potential defence was the contention that the proceedings were not properly constituted. The parties were in agreement that all facts relevant to the issue were before the Court on affidavit, and that both parties had prepared comprehensive legal submissions on the issue. In the interests of minimising cost and expediting the resolution of the issue, it was agreed, in the course of the hearing, that the Court would determine, as a preliminary issue, the question of whether or not the proceedings were properly constituted and capable of being maintained by the plaintiff, including the contention made on behalf of the plaintiff that the defendants were now estopped from making any objection to the validity of the proceedings.

28. At the end of the hearing, I reserved judgment. The parties indicated that there were some ongoing discussions. Prior to my delivering judgment at the end of July 2012, the parties came into Court to inform me that there were continuing discussions and that they did not wish the Court to prepare a judgment, which they might not require. The matter was put in for mention in October 2012, at the request of the parties. It was adjourned by consent from time to time throughout October and November 2012, and ultimately, the parties informed the Court that they had been unable to reach agreement and that they required the judgment on the preliminary issue.

The Law

29. Two recent judgments of the High Court, Laffoy J. in *Gaffney v. Faughnan* [2005] IEHC 367, [2006] 1 I.L.R.M. 481, and McKechnie J. in *Finnegan v. Richards* [2007] IEHC 134, [2007] 3 I.R. 671, address the issue as to whether or not proceedings commenced

against persons, as administrators of the estate of a deceased prior to the grant to them of letters of administration, is or is not a fundamental defect in the proceedings, such that they cannot be maintained against the administrators, notwithstanding the subsequent grant. The judgments were based on differing facts. Nevertheless, it is an inescapable conclusion that McKechnie J., for reasons stated in his judgment, decided he was not bound to and should not follow the decision of Laffoy J. on the fundamental point of principle.

30. In *Gaffney v. Faughnan*, the deceased, who was the plaintiff's uncle, had died on 15th April, 2002, intestate. The defendant was the deceased's personal representative under a grant of administration dated 16th November, 2004. On 15th April, 2004, before the grant of administration issued, the plaintiff instituted the proceedings against the defendant by plenary summons. The plenary summons itself did not disclose on its face that the defendant was being sued in a representative capacity. The defendant accepted service of the summons on 25th January, 2005, after the grant of administration had issued to him, and entered an unqualified appearance on 1st February, 2005. The statement of claim pleaded that the defendant was the administrator of the deceased's estate. The plaintiff's claim was that he had rendered services to the deceased during the deceased's lifetime on foot of an express or implied promise that the deceased would bequeath his farm to the plaintiff. It was alleged that, by dying intestate, the deceased was in breach of this agreement and that the defendant, as administrator of the estate of the deceased, had failed to perform the promise. Specific performance of the promise and other relief was sought.

31. The defendant issued a motion seeking an order that the proceedings be struck out and/or a declaration that the proceedings were void and of no effect, on the basis that he was sued solely in his capacity as administrator of the estate and at the time the proceedings were issued on 15th April, 2004, he did not have that capacity.

32. Laffoy J., in her careful analysis of the applicable principles, commences with the fundamental principle, not in dispute between the parties hereto, that, "the authority of an administrator of the estate of a deceased person derives from the grant of letters of administration and that, until he obtains the grant, the estate of the deceased person does not vest in him".

33. Laffoy J. makes reference to s. 13 of the Succession Act 1965, which provides that where a person dies intestate, his estate vests in the President of the High Court until administration is granted. The judge also makes reference the decision of Costello J., in *Flack and Anor. v. The President of the High Court & Ors.,* (Unreported, High Court, Costello J., 29th November, 1983), in which he explained that the proper approach, where it is desired to institute proceedings prior to the grant of Letters of Administration, is to seek an order pursuant to s. 27(4) of the Succession Act 1965 for the appointment of an administrator, limited to the defence of the proceedings.

34. Laffoy J. then considered two authorities: *Creed v. Creed* [1913] 1 I.R. 48, and *Ingall v. Moran* [1944] K.B. 160. In each, on slightly differing facts, the court struck out a claim which had been instituted by a person as administrator prior to the taking out of a grant. As Laffoy J. points out, the judgment in *Creed v. Creed* merely records the decision and contains no analysis of its basis. However, the Court of Appeal in *Ingall v. Moran* did analyse the position in some detail. Fundamental to their reasoning is the conclusion that at common law and in equity, in order to maintain an action, a plaintiff must have a cause of action vested in him at the date of the issue of the writ. At the date of the issue of the writ in question, the administrator had not yet taken out a grant and so did not have a title to sue, as such title depends solely on the grant of administration. The Court also considered the doctrine of "relation back" and concluded that it did not have any application to the commencement of proceedings by a person as administrator prior to the grant issuing. The conclusion of Goddard L.J. at p. 172, as cited by Laffoy J. at p. 485, in relation to the cases concerning the doctrine of relation back is:

> "All they show is that, once letters have been obtained, the title relates back so that the administrator may sue in respect of matters which have arisen between the date of the death and the date of the grant, just as he may sue in respect of a cause of action that had accrued to the intestate before his death, provided the cause of action survives."

Laffoy J., at p. 485, then stated:

> "The court has not been referred to any authority in which, as here, it was the defendant who was a party in a representative capacity. However, in my view, the same principle must apply. When a summons is issued, the person named as defendant must be competent at that time to answer the alleged wrongdoing and meet the remedy sought. If he is not, the action is not maintainable. If he subsequently obtains a grant of administration, that will not cure the fundamental defect and render the action maintainable.
>
> In this case, the person named as defendant had no status as a representative of the deceased or of his estate when the plenary summons was issued. The action initiated by the issue of the plenary summons could not have been maintained and is still not maintainable. In the circumstances, it must be struck out."

35. In the subsequent case of *Finnegan v. Richards* [2007] IEHC 134, [2007] 3 I.R. 671, the plaintiff issued proceedings claiming entitlement to a house in the estate of the deceased by reason of promises made during her lifetime. The defendants were sued as administrators of the estate of the deceased.

36. The deceased died on 13th May, 2004. In April or early May 2006, the solicitors acting for the plaintiff ascertained from the Probate Office that letters of administration had not yet been taken out to the estate of the deceased and that a grant would not issue "prior to 13th May, 2006". That, of course, was the expiry of the two-year limitation period pursuant to s. 9 of the Civil Liability Act 1961. There was an exchange of correspondence on 5th and 8th May, 2006, between the plaintiff's solicitors and defendants' solicitors, in which the point was made that it was essential that legal proceedings issue within two years. The plaintiff's solicitors stated to the solicitors for the defendants, Matheson Ormsby & Prentice, unless confirmation was received by return that Matheson Ormsby & Prentice would accept service of proceedings on behalf of the defendants and also confirm that no point would be taken on the Statute of Limitations, they were instructed by the plaintiff to apply at the earliest possible date to appoint an administrator *ad litem* without further notice. In response, Matheson Ormsby & Prentice confirmed that they had authority to accept service of the proceedings. They did not expressly give the confirmation on the Statute of Limitations, but stated, in relation to the issuing of the grant, "we confirm that our client has responded to the queries raised in the Probate Office and that we are confident that the grant will issue in the near future".

37. The plenary summons was issued on 9th May, 2006, and an unconditional appearance entered by the defendants on 15th May, 2006. On 26th June, 2006, the letters of administration with will annexed issued from the Probate Office and Matheson Ormbsy & Prentice then called for the delivery of the statement of claim. That was delivered on 27th September, 2006, and six weeks later, a notice of motion seeking to strike out the proceedings was issued.

38. *Gaffney v. Faughnan* [2005] IEHC 367, [2006] 1 ILRM 481 and the authorities referred to of *Creed v. Creed* [1913] 1 I.R. 48, and *Ingall v. Moran* [1944] K.B. 160, were opened to McKechnie J. In addition, the plaintiff therein relied heavily upon the decision of the Privy Council in *Austin v. Hart* [1983] 2 AC 640, and in particular, the judgment of Lord Templeman. McKechnie J. was of opinion that this judgment was of considerable importance, and in particular, the remarks made in relation to *Ingall v. Moran* at pp. 647-648 where Lord Templeman said:

> ""In the cited cases the plaintiff did not have any right to sue in the capacity claimed. In the present case the plaintiffs were entitled to sue in the capacities in which they claimed provided, as happened, no executor or administrator intervened to bring an action within six months of the death of the deceased. In *Ingall v. Moran* [1944] K.B. 160, 169 Luxmoore L.J. could not help 'feeling some regret'. In *Hilton v. Sutton Stream Laundry* [1946] K.B. 65, 73 Lord Greene M.R. was not 'averse to discovering any proper distinction which would enable this unfortunate slip to be corrected'. In *Finnegan v. Cementation Co. Ltd*. [1953] 1 Q.B. 688, 699 Singleton L.J. lamented 'that these technicalities are a blot on the administration of the law, and everyone except the successful party dislikes them'. Accepting without approving, the decisions of the Court of Appeal which have been cited, their Lordships see no reason to encourage any extension of their ambit."

39. McKechnie J., having cited the above, then stated at p. 682, para. 19:

> "I respectfully agree with these observations which offer no support to a flourishing of this rule. In fact the very opposite is the case, with the Privy Council in *Austin v. Hart* [1983] 2 A.C. 640 feeling distinctly uneasy about this principle."

40. He then formed the view that by reason of the above comments and the fact that *Austin v. Hart* had not been opened to Laffoy J., that he was free to consider the matter himself.

41. McKechnie J. then analysed the situation, starting from the finding that the plaintiff had a *prima facie* case against the estate of the deceased person, and that, as of 9th May, 2006, he was entitled to enforce that claim by instituting proceedings. He differentiated the position of the plaintiff in *Finnegan v. Richards* from that in *Ingall v. Moran*. His reasoning as to why the proceedings before him should not be regarded as a nullity rests, in part, on the facts of that case, including that "the defendants have assured the plaintiff of their confidence in obtaining letters of administration imminently, and thus, putting beyond question their capacity to be sued" (at p. 683, para. 22). He also asked the rhetorical question as to "why should such a drastic result follow when the defendants raise no objection to the plaintiff suing and when, prior to the grant, they entered an unconditional appearance" (at p. 683, para. 22). He concluded that he should not extend the rule in *Ingall v. Moran* [1944] K.B. 160, to the facts of that case. He also, in the alternative, was of the view that the doctrine of "relation back" would apply to the circumstances of the case and validate the proceedings on the taking out of the grant.

42. On the fundamental question as to whether, in all circumstances, proceedings making a claim against an estate issued naming as defendants persons as administrators, to whom no grant has yet issued, must be considered by the Court a nullity, I am in the position that two High Court judges have recently taken different views. It appears, therefore, that I must also consider the question as a matter of principle, on the facts of this case, having regard to the views expressed in their judgments, and the judgments cited therein.

43. There is one important distinction between the present case and the facts in both *Gaffney v. Faughnan* and *Finnegan v. Richards*. It is the order of the High Court of 11th July, 2011, made pursuant to s. 27(4) of the Succession Act 1965.

44. Section 27(4) of the Act of 1965, provides:

> "Where, by reason of any special circumstances, it appears to the High Court . . . to be necessary or expedient to do so, the Court may order that administration be granted to such person as it thinks fit."

45. As appears, the jurisdiction of the High Court is to order that "administration be granted to such person . . ." As appears from para. 12 of this judgment, the High Court, on 11th July, 2011, is recorded, in the order as drawn, as being "of opinion that in the special circumstances of this case, it is expedient to appoint some persons to be the administrators of the estate of the said deceased other than the person who, under the Succession Act 1965, would be entitled to the said grant", and then it ordered that the defendants, as applicants "be at liberty to apply for a Grant of Letters of Administration with will annexed in the estate of the deceased". It is not entirely clear why an order made pursuant to s. 27(4) is in this form. The order made in relation to the Estate is I understand in the normal form. It may be because of the procedural requirements of O. 79 of the Rules of the Superior Courts. However in substance the decision made on the 11th July, 2011, was that Administration of the Estate be granted to the defendants.

46. Following the order of 11th July, 2011, the defendants were required to take the procedural steps specified in O. 79 of the Rules of the Superior Courts before the grant of administration issued to them. As with all administrators, they were required to lodge an administrator's oath and an administration bond. Order 79, r. 22 of the Rules of the Superior Courts provides, in relation to such persons:

> "Whenever the Court, under the Succession Act, 1965, section 27, appoints as administrator someone other than a person who would otherwise be entitled to the grant, the fact that an order under the section has been made shall be stated in the oath of the administrator, in the grant of administration and in the administration bond."

47. What, then, was the status of the defendants in relation to the Estate after the making of an order pursuant to s. 27(4) of the Succession Act 1965, and prior to the issue of the grant of administration? They were the persons appointed by the Court to be the Administrators of the estate of the deceased with will annexed. They still had to comply with certain formalities in accordance with the Rules of Court before the grant of Administration issued. However, when the grant issued, on its face it records that it is being issued to them as "the persons appointed by the Court pursuant to section 27(4) of the Succession Act 1965 to be the Administrators with said will annexed of the estate of the said deceased". Also the grant states it is issued "by order of Court dated 11th July, 2011". In my judgment, it cannot be said that the defendants had "no status" in relation to the estate of the deceased subsequent to the 11th July, 2011, and prior to the issue of the grant, as was held by Laffoy J. in relation to the defendants on the different facts in *Gaffney v. Faughnan*.

48. The parties did not make detailed submissions on the precise status of the defendants subsequent to the 11th July, 2011. The plaintiff accepted the general principle already referred to that "the authority of an administrator of the estate of deceased person derives from the grant of Letters of Administration and until he obtains the grant, the estate of the deceased person does not vest in him". However, counsel for the plaintiff did rely strongly on the order made by the High Court of 11th July, 2011, and the doctrine of

relation back, in that connection.

49. Unless compelled by binding authority or legal principle to hold that the proceedings issued on 18th November, 2011, are a nullity and not maintainable, it would, in my judgment on the facts herein, create a significant injustice if I were now to so hold. As observed by Laffoy J. in *Gaffney v. Faughnan*, it does not appear that prior to her decision, there was any authority in relation to the status of proceedings, subsequent to the issue of a grant of administration, which were commenced prior to the issue of the grant making a claim against the estate of a deceased, where the defendants were sued as administrators in a purported representative capacity and are the persons to whom the grant of administration subsequently issued. She was not asked to consider a claim against representative defendants in whose favour an order under s. 27(4) had been made. There continues to be no authority which considers the position of proceedings making a claim against an estate commenced against representative defendants in whose favour an order pursuant to s. 27(4) of the Succession Act 1965, had already been made but to whom the grant had not yet issued and to whom a grant subsequently issued.

50. In *Gaffney v. Faughnan* the new principle determined by Laffoy J. and not followed in relation to administrators in *Finnegan v. Richards* was

> "When a summons is issued, the person named as defendant must be competent at that time to answer the alleged wrongdoing and meet the remedy sought. If he is not, the action is not maintainable. If he subsequently obtains a grant of administration, that will not cure the fundamental defect and render the action maintainable. "

51. As already pointed out, Laffoy J. was not considering a situation where an order had been made by the High Court under section 27(4). In my judgment, the existence of that order requires a different conclusion. In the scheme of s.27(4) and O.79 of the Rules of Court, it appears to me that where, as on the facts of this case, the persons named as defendants in a representative capacity as administrators of the estate are, on the date of issue of the summons, persons already appointed pursuant to s. 27(4) of the Act of 1965, to be administrators of the estate, they must in my judgment be considered as having a status in relation to the estate, albeit not yet as administrators to whom a grant has issued. They and those dealing with the estate are entitled to consider, as they did herein, that once the procedural requirements in O.79 are completed, a grant would issue to them. The correspondence, referred to above, indicates that the defendants, in the intervening period considered themselves entitled to seek information in relation to the plaintiff's claim against the Estate and to authorise their solicitors to accept service of these proceedings against them as representatives of the Estate. They were in the period between 11th July, 2011, and 26th November, 2011, at minimum, contingently competent to represent the Estate. The contingency was the issue of the grant to which they were already entitled by Order of the Court of 11th July 2011, subject to compliance with the procedural formalities. At the latest, once the grant issued, they were fully competent to defend the proceedings on behalf of the Estate. In my judgment, the defendants' contingent competency to represent the Estate on 18th November, 2011, was sufficient to enable valid proceedings be issued against them in a representative capacity making a claim against the Estate. Alternatively, applying the general principles of the doctrine of relation back to the statutory scheme created by s. 27(4) of the Succession Act 1965, and the procedures in the Rules of Court, the defendants' title as administrators to defend proceedings making a claim against the Estate relates back, to the order made by the High Court on 11th July 2011. It follows, in my judgment that the proceedings issued against the defendants making a claim against the Estate in the intervening period should not be considered a nullity and are valid and maintainable.

52. In reaching this conclusion on the facts of this application, I should point out that there may be a risk to a plaintiff instituting proceedings against persons in whose favour an order has been made under s. 27(4) of the Succession Act 1965, before the issue of the grant. This judgment does not address the situation which would occur if, for some reason, the person in whose favour the s. 27(4) order had been made did not subsequently comply with the procedural requirements and a grant did not issue.

Conclusion

53. My conclusion on the preliminary issue is that the proceedings issued by the plaintiff herein on 18th November, 2011, are properly constituted and are now maintainable against the defendants as administrators of the Estate of Mr. John O'Meara (deceased).