

Between:-

**CUPRUM PROPERTIES LIMITED**  
**(ACTING BY ITS JOINT RECEIVERS AND MANAGERS**  
**TOM O'BRIEN AND SIMON COYLE)**

Plaintiff

- and -

NOEL MURRAY

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 23rd November, 2017.

**I. Overview**

1. Mr Murray is a publican who operates *The Long Stone Pub*, a hostelry on Townsend Street in Dublin City Centre. It appears that his lease has expired and his landlord wants him out of the premises so that a re-development scheme can proceed. "Delay to that development," the court is advised in the plaintiff's written submissions, "will result in losses amounting to millions of euro". However, the Commercial Court is but a part of the High Court; a case cannot be 'fast tracked' through the Commercial Court that the High Court has no jurisdiction to hear; and the unambiguous import of the Landlord and Tenant (Amendment) Act 1980, as interpreted by the Supreme Court in its long-standing decision, binding on this Court, in *Kenny Homes & Co Ltd v. Leonard* (Unreported, Supreme Court, 18th June, 1998) is that the within proceedings must now be dismissed for want of jurisdiction on the part of this Court.

**II. Some Undisputed Facts**

2. Counsel for Mr Murray has, in his written submissions, helpfully extracted from the affidavit evidence before the court a summary of the following undisputed facts, which the court respectfully adopts:

*"(a) The Defendant is currently in occupation of the Premises (the Townsend Street property) in pursuance of the terms of an indenture of lease dated...5th October, 2012 between the Plaintiff...and the Defendant...(the '2012 Lease');*

*(b) The 2012 Lease had a term of five years' duration, which...term expired on...4th October, 2017;*

*(c) The Defendant has been in occupation of the Premises for a period of in excess of five years' duration;*

*(d) The Defendant has, throughout the aforesaid period of occupation, used the Premises wholly or partly for the purposes of carrying on a business, specifically the operation of a public house;*

*(e) The Defendant has complied in full with the covenants contained within the 2012 Lease, in particular the covenant to pay the agreed rent...*

*(f) Prior to the expiry of the 2012 Lease, the Defendant served a Notice of Intention to Claim Relief dated...2nd October, 2017 (the 'Notice') in accordance with the provisions of section 20(1) of [the Act of 1980]...*

*(g) The Notice claims a new tenancy of the Premises or, in the alternative, compensation for disturbance;*

*(h) In spite of the service of the Notice, the Plaintiff has not offered the Defendant a new tenancy nor indeed any compensation for disturbance; and*

*(i) The claim of the Defendant for a new tenancy of the Premises has yet to be determined by the Circuit Court."*

3. Arising from the foregoing, Mr Murray maintains that he has a valid claim for a new tenancy of the premises that are the subject of the expired lease. It would be fair to say that this is strenuously resisted by the plaintiffs who have drawn the attention of the court (though, in truth, they should be drawing this to the attention of the Circuit Court) that prior to entering into the said lease, Mr Murray, on 25th June 2012, executed a Deed of Renunciation, which states Mr Murray to have been acting, with the benefit of "independent legal advice", and which further provides as follows:

*"Pursuant to the provisions of Section 47 of the Civil Law (Miscellaneous Provisions) act 2008 the Tenant [-to-be] hereby renounces any entitlement to a new tenancy in the premises at The Long Stone Pub...in which the tenant might hereinafter acquire, whether under the above-recited Lease or upon the expiry of its term or the sooner determination thereof or otherwise howsoever arising."*

4. There is no "above-recited Lease"; however, the introductory line of the Deed reads "NOEL MURRAY...has negotiated with CUPRUM PROPERTIES LIMITED...to take a tenancy of The Long Stone Pub" and it is doubtless this contemplated lease to which the Deed intends to refer. Ostensibly it may seem odd to renounce what has not yet been executed, but presumably matters are structured so because if execution of the lease preceded execution of the renunciation, it could as a matter of practice prove difficult to procure from a sitting tenant a previously promised execution of a deed of renunciation.

5. Armed with its Deed of Renunciation, the plaintiff clearly considers that it has a complete answer to Mr Murray's assertion that he is entitled to a new tenancy at this time. Thus, the plaintiff asserts in its written submissions:

*"[Mr Murray's] claim is spurious, mischievous and knowingly without substance. The Defendant has expressly renounced any such entitlement by way of a deed of renunciation....In truth, the Defendant is seeking to invoke the 1980 Act, not for a bona fide purpose, but because he knows this will delay and frustrate the Plaintiff to the commercial advantage of the Defendant."*

6. Maybe the plaintiff is right in this, maybe it is wrong – the court does not know. But what it is not going to do is consider the dispute between the parties or to make any adjudication thereon. Because if either of them has something to say concerning that dispute, and each clearly does, that, for the reasons identified in the within judgment, is something which falls to be said in the Circuit Court and to be adjudicated upon by a Circuit Court judge.

### **III. Reliefs Sought**

#### *(i) The Reliefs Sought by the Plaintiff in Its Principal Application.*

7. The following are the reliefs sought by the plaintiff in the substantive proceedings:

- "1. An Order for possession of the licensed premises known as 'The Long Stone Pub'...(the Premises)...*
- 2. An Order directing the Defendant and each of them, their servants and/or agents and all other persons having notice of the making of the Order to immediately cease occupancy of and vacate the Premises.*
- 3. An Order restraining the Defendant, whether by himself, his servants and/or agents and all other persons having notice of the making of the Order, from preventing, impeding and/or obstructing the Plaintiffs, their servants and/or agents, from taking possession of the Premises.*
- 4. An Order restraining the Defendant, whether by himself, his servants and/or agents and all other persons having notice of the making of the Order from trespassing upon, entering upon or otherwise attending at the Premises.*
- 5. An Order directing the Defendant to deliver up to the Plaintiffs all intoxicating liquor licenses, certificates and other permits attached to the Premises...*
- 6. An Order directing the Defendant, his servants and/or agents and all other persons having notice of the making of the Order, to deliver up to the Plaintiffs, their servants or agents, forthwith possession of the keys, alarm codes, locks and all other security and access devices and equipment in respect of that Property.*
- 7. A Declaration that the Defendant has renounced his entitlement to a new tenancy and hereby renounced his entitlement to seek relief pursuant to part II of the Landlord and Tenant (Amendment) Act 1980 (as amended) in relation to the Premises.*
- 8. A declaration that the Defendant's intended application for a new tenancy pursuant to Part II of the Landlord and Tenant (Amendment) Act 1980 (as amended) is being pursued for an ulterior purposes and is an abuse of process.*
- 9. An Order restraining the Defendant's purported service of a Notice of Intention to Claim Relief and/or intended application to the Circuit Court to seek relief in the form of a new tenancy of the Premises pursuant to Sections 20 and 21 of the Landlord and Tenant (Amendment) Act 1980 (as amended) on the grounds that same constitutes an abuse of process.*
- 10. A Declaration, if necessary, that the purported Notice of Intention to Claim Relief served on behalf of the Defendant is null, void and of no effect.*
- 11. Damages for trespass.*
- 12. Double rent pursuant to section 76 of the Landlord & Tenant Law Amendment Act (Ireland) 1860.*
- 13. Damages of mesne rates in respect of the Premises from the date of the within proceedings to the date of the judgment in the amount of €65,000 per annum.*
- 14. Such further or other Order as to this Honourable Court shall see fit.*
- 15. Interest pursuant to statute.*
- 16. Costs."*

#### *(ii) The Reliefs Sought by Mr Murray in His Preliminary Motion.*

8. The following are the reliefs sought by Mr Murray in the preliminary motion to which the within judgment relates:

- "(a) An order pursuant to the inherent jurisdiction of this Honourable Court dismissing or striking out the proceedings on the basis that the High Court has no jurisdiction to hear or determine the claim of the Plaintiff;*
- (b) Further or in the alternative, an order pursuant to Order 19, rule 28 of the Rules of the Superior Courts 1986 and/or pursuant to the inherent jurisdiction of this Honourable Court dismissing or placing a permanent stay on the proceedings as against the Third Defendant [sic] on the basis that they are frivolous and vexatious;*
- (c) Further or in the alternative, an order pursuant to Order 19, rule 28 of the Rules of the Superior Courts and/or pursuant to the inherent jurisdiction of this Honourable Court dismissing or placing a permanent stay on the proceedings as against the Third Defendant [sic] on the basis that they constitute an abuse of process;*
- (d) Further or in the alternative an order pursuant to the inherent jurisdiction of this Honourable Court dismissing, striking out or placing a permanent stay on the proceedings as against the Third Defendant [sic] on the basis that they are bound to fail;*
- (e) Such further or other order as to this Honourable Court shall seem just and appropriate; and*
- (f) An Order providing for the costs of, and incidental to, this application and these proceedings."*

#### IV. Applicable Statute-Law

##### (i) *The Landlord and Tenant (Amendment) Act 1980*

###### a. Overview.

9. In a perfect world, landlords and tenants would co-exist in harmony; in the real world they sometimes quarrel. While the Act of 1980 seeks to promote consensual settlement of such quarrels, it also offers a mechanism whereby they may effectively be adjudicated upon by the Circuit Court. Various provisions of the Act of 1980 are of relevance in the context of the within proceedings. These are considered briefly hereafter.

###### b. Section 20.

10. Section 20 of the Act of 1980 provides, *inter alia*, as follows:

*"(1) A claim for a new tenancy under this Part shall not be maintained unless the claimant, within the time limited in subsection (2), serves on each person against whom the claim is intended to be made a notice of intention to claim relief on the prescribed form.*

*(2) A notice of intention to claim relief may be served*

*(a) in the case of a tenancy terminating by the expiration of a term of years or other certain period or by any other certain event –*

*(i) before the termination of the tenancy, or*

*(ii) at any time thereafter but before the expiration of three months after the service (not earlier than three months before the termination of the tenancy) on the claimant by the landlord of notice in the prescribed form of the expiration of the term or period of the happening of the event...".*

11. In the within case, the notice contemplated by s.20 was served prior to the termination of the tenancy.

###### c. Section 21.

12. Under s.21 of the Act of 1980:

*"(1) A person who serves a notice of intention to claim relief may, at any time not less than one month thereafter,1 apply to **the Court** to determine his right to relief and (as the case may be) to fix the amount of the compensation or the terms of the new tenancy to which he is found to be entitled.*

[1] This one-month waiting-period has the effect that, if one has regard to the sequence of events that unfolded between the parties to the within proceedings, Mr Murray could not commence his Circuit Court proceedings prior to 2nd November, 2017 (and, in point of fact, they were duly commenced on that date).

*(2) If he does not do so within three months after service of the notice, any person on whom the notice was served may apply to the Court to determine the matters to which the notice relates.*

*(3) An application under this section may be made, heard and determined either before and in anticipation of or after the termination of the tenancy."*

[Emphasis added].

13. Which court is "*the Court*"? The answer, per. s.3(1) of the Act of 1980, is "*the Court' means the Circuit Court*". And on that simple fact, the within application greatly flounders.

###### d. Section 28.

14. Section 28 affords a level of protection to a tenant pending the determination of a claim under Part II (ss.13–29) of the Act of 1980). Thus, per s.28:

*"Where an application is pending under this Part for a new tenancy or to fix the terms of a new tenancy and the pre-existing tenancy was terminated otherwise than by ejectment or surrender the tenant may, if he so desires, continue in occupation of the tenement from the termination of the tenancy until the application is determined by the Court or, in the event of an appeal, by the final appellate court, and the tenant shall while so continuing be subject to the terms (including the payment of rent) of such tenancy, but without prejudice to such recoupments and adjustments as may be necessary in the event of a new tenancy being granted to commence from such termination."*

15. At the time that Mr Murray's preliminary motion came on from hearing, he enjoyed, and at the time of the writing of this judgment he continues to enjoy, the protection afforded by s.28.

#### V. Some Applicable Case-Law

##### (i) *Tormey v. Ireland*

[1985] 1 I.R. 289

16. Is the exclusive jurisdiction conferred on the Circuit Court by the Act of 1980 permissible as a matter of constitutional law? The short answer to this question is 'yes'. In truth, this has been settled law, since the decision of the Supreme Court in *Tormey*. That was a case in which an accused person facing trial in the Circuit Criminal Court claimed that he was entitled to trial by the Central Criminal Court. In the course of his judgment for the Supreme Court, Henchy J. observed, *inter alia*, as follows, at 296-7:

"The Court accepts that Article 34, s. 3, sub-s. 1 [of the Constitution], read literally and in isolation from the rest of the Constitution, supports the plaintiff's claim to be entitled to a trial in the High Court. But the Court considers that such an approach would not be a correct mode of interpretation. The "full" original jurisdiction of the High Court, referred to in Article 34, s. 3, sub-s. 1, must be deemed to be full in the sense that all justiciable matters and questions (save those removed by the Constitution itself from the original jurisdiction of the High Court) shall be within the original jurisdiction of the High Court in one form or another. If, in exercise of its powers under Article 34, s. 3, sub-s. 4, Parliament commits certain matters or questions to the jurisdiction of the District Court or of the Circuit Court, the functions of hearing and determining those matters and questions may, expressly or by necessary implication, be given exclusively to those courts. But that does not mean that those matters and questions are put outside the original jurisdiction of the High Court. The inter-relation of Article 34, s. 3, sub-s. 1 and Article 34, s. 3, sub-s. 4 has the effect that, while the District Court or the Circuit Court may be given sole jurisdiction to hear and determine a particular matter or question, the full original jurisdiction of the High Court can be invoked so as to ensure that justice will be done in that matter or question. In this context the original jurisdiction of the High Court is exercisable in one or other of two ways. If there has not been a statutory devolution of jurisdiction on a local and limited basis to a court such as the District Court or the Circuit Court, the High Court will hear and determine the matter or question, without any qualitative or quantitative limitation of jurisdiction. On the other hand, if there has been such a devolution on an exclusive basis, the High Court will not hear and determine the matter or question, but its full jurisdiction is there to be invoked - in proceedings such as habeas corpus, certiorari, prohibition, mandamus, quo warranto, injunction or a declaratory action - so as to ensure that the hearing and determination will be in accordance with law."

17. Notably, *Tormey* was a criminal case. However, it seems an inexorable consequence of the logic applied by the Supreme Court in that case, that exclusive jurisdiction over specified civil claims can likewise be conferred on the Circuit Court (and perhaps the District Court too), provided that the decisions of those courts can be the subject of the types of review proceedings contemplated by Henchy J. in the last sentence of the above-quoted text – Henchy J.'s wording does not suggest that the possibility of an entire re-hearing of a case before the High Court is necessary; provided there exists a supplementary or complementary jurisdiction of the nature that he references, that is sufficient as a matter of constitutional law.

(ii) *Kenny Homes & Co Ltd v. Leonard*

(Unreported, Supreme Court, 18th June, 1998)

18. This was a case in which, *inter alia*, the appellants had served a notice of intention to claim a new tenancy in particular premises pursuant to the Act of 1980, and thereafter commenced proceedings before the Circuit Court claiming such a tenancy or, in the alternative, compensation for disturbance. Meanwhile the respondent served a plenary summons seeking, *inter alia*, certain injunctive relief of the High Court, which relief was granted by the High Court, its decision being affirmed on appeal by the Supreme Court. In the course of his judgment for the Supreme Court, Lynch J., in his judgment for the court, quoted with approval various observations of Costello P. in the High Court, including the following:

"It was submitted that the [High] Court had no jurisdiction to grant an injunction because of the proceedings pending in the Cork Circuit Court under the 1980 Act. It was urged that

- (a) exclusive jurisdiction was given to the Circuit Court under the 1980 Act to determine Lecorn's right to a new tenancy
- (b) that this Court had no jurisdiction to determine the issues arising in that application.
- (c) that by virtue of Section 28 of the 1980 Act Lecorn were entitled to retain possession of the premises pending their application for a new tenancy
- (d) that accordingly the injunction claimed could not be granted.

I [Costello P.] disagreed with these submissions. I concluded that

- (a) the Circuit Court had exclusive jurisdiction under the 1980 Act to hear and determine claims for a new tenancy
- (b) that the present proceedings were for injunctive relief based on a claim that the Defendants were trespassers
- (c) that the 1980 Act did not deprive this Court of jurisdiction to hear such a claim
- (d) that ordinarily, where a right to a new tenancy under the 1980 Act was contested on the ground that a tenancy did not exist or that the premises were not a tenement these issues should be determined in the Circuit Court and this Court should stay proceedings in which these issues were raised
- (e) that because of the particular urgency in this case the Court should not decline jurisdiction
- (f) that should the Court decide that (i) the agreement of the 1st October 1994 constituted a tenancy and (ii) the site constituted a tenement within the meaning of the Act then Section 28 of the Act applied and Lecorn would be entitled to retain possession pending the determination of the Circuit Court of the application for a new tenancy and I would accordingly dismiss these proceedings. I therefore decided to hear oral evidence and determine these two issues. Should I decide them in Lecorn's favour the Circuit Court would then be required to determine whether or not a new tenancy should be granted in the light of the Plaintiffs intended use of the site and for the issue of compensation."

19. Of particular note in the foregoing are Costello P.'s observations that:

"I concluded that

- (a) the Circuit Court had exclusive jurisdiction under the 1980 Act to hear and determine claims for a new tenancy

(b) that the present proceedings were for injunctive relief based on a claim that the Defendants were trespassers

...

(f) that should the Court decide that (i) the agreement of the 1st October 1994 constituted a tenancy and (ii) the site constituted a tenement within the meaning of the Act then Section 28 of the Act applied and Lecorn would be entitled to retain possession pending the determination of the Circuit Court of the application for a new tenancy and I would accordingly dismiss these proceedings."

20. And of note in the context of the just-highlighted observations of Costello P. are the following features of the within application:

(1) there is no dispute concerning the validity of the expired lease pertaining to the *The Long Stone Pub*;

(2) there is no dispute that the premises the subject of that lease are a tenement within the meaning of s.5 of the Act of 1980; and

(3) there is no basis for the proposition that Mr Murray, an individual who presently enjoys the statutory protection afforded by s.28 is a trespasser who, to borrow from that provision is and has been entitled, consequent upon the commencement of his proceedings:

"[to] continue in occupation of the tenement from the termination of the tenancy until the application is determined by the Court or, in the event of an appeal, by the final appellate court".

It would be entirely illogical for a court to conclude that a person who is entitled under s.28 to "continue in occupation of the tenement from the termination of the tenancy until the application is determined by the Court or, in the event of an appeal, by the final appellate court" is a trespasser on such tenement once that statutory protection has, to borrow a colloquialism, 'kicked in'. And if Mr Murray is not a trespasser on the tenement that he occupies at present – and he is not – then there is no basis for injunctive relief against him as a trespasser. Indeed, as counsel for Mr Murray noted at hearing, with any finding that Mr Murray is not now a trespasser, and it scarcely needed a court to arrive at that finding, "[T]he vitality of the entire set of High Court proceedings [that the plaintiff]...has brought falls away, because nothing useful can be achieved by them pending the determination of the Circuit Court proceedings."

In passing, the court notes that there is a degree of retrospectivity to the protection available under s.28. So, for example, the timeline mandated by s.21(1) of the Act of 1980 for the commencement of Circuit Court proceedings meant that, on the facts of this case, they could not commence until 2nd November, 2017 (and they did commence on that date), with the lease having expired on 4th October, 2017. Yet the protection available under s.28 applies from the termination of the tenancy and so applied from 4th October, 2017, just under a month previous to the commencement of the Circuit Court proceedings. It was not contended that such retrospectivity presents any legal difficulty. Moreover, because that retrospectivity presents, the court does not have to address the lacuna that presents under s.28 as to what is the position of a tenant who remains in occupation of a tenement during the period between the expiry of a lease and the making of an application for a new tenancy. Is he a trespasser, a licensee or, e.g., a periodic tenant? The likely answer, it seems to the court, is that there is no one answer: the correct answer in any one case will depend on the individual facts at play in that case. Here, however, the court does not even have to attempt an answer because here s.28 has, to borrow a colloquialism, 'kicked into effect', and Mr Murray now enjoys the protection afforded by that provision.

(iii) *Walpoles (Ireland) Ltd v. Dixon*

[1935] 69 I.L.T.R. 232

21. The court has been referred to *Walpoles (Ireland) Ltd v. Dixon* [1935], a decision of the then High Court concerning legislative arrangements under the Landlord and Tenant Act 1931 that were akin to those at issue in the within proceedings. The court does not propose to consider *Walpoles* in detail because, in truth, *Kenny Homes* offers a complete answer to the issues raised by the defendant's motion and on which the court is now adjudging. Suffice it to note that *Walpoles* was a case in which the High Court (affirmed by the Supreme Court) refused to allow an ejectment action to stand over pending a decision of the Circuit Court regarding the defendant tenant's rights under the act of 1931. Central, however, to the conclusion reached by the High Court in *Walpoles* was the fact that the premises at the heart of the dispute between the parties were not a tenement. Thus per O'Byrne J., in the penultimate paragraph of his judgment:

"The difficulty which arises on the threshold of this case, from the point of view of [the tenant]...is that the premises with which we are concerned do not seem to me to come within the definition of a tenement".

22. It followed from the just-quoted finding that the tenant in *Walpoles* fell outside the protections afforded by s.38 of the Act of 1931, a provision akin to s.28 of the Act of 1980. Therefore, the High Court, and the Supreme Court on appeal, could not allow the action for possession to stand over pending the decision of the Circuit Court. (It will be recalled that there is no dispute that the premises that are the focus of the within proceedings/application are a tenement within the meaning of s.5 of the Act of 1980).

23. It follows from all of the foregoing that *Walpoles* is but an older example of the type of reasoning applied in *Kenny Homes*, with the latter decision enjoying a greater resonance in these proceedings, *inter alia*, because it is concerned with the Act of 1980 which is the Act at play in the application now before the court.

(iv) *Esso Ireland Ltd v. Nine One One Retail Ltd*

[2013] IEHC 514

24. *Kenny Homes* is clear and binding authority for the proposition that the within proceedings should now be dismissed for want of jurisdiction. However, before proceeding to its conclusion, the court pauses to consider a recent judgment of the High Court that was touched upon at hearing, viz. that of *Esso Ireland Ltd v. Nine One One Retail Ltd*. In that case, Mc Govern J. observed, *inter alia*, as follows, at para. 18:

"18. The Circuit Court has exclusive jurisdiction under the 1980 Act to deal with claims for new tenancies. In the 1980

*Act, 'the Court' means the Circuit Court (Section 3). In the case of Kenny Homes & Co. Limited v. Leonard, Costello P. (High Court, Unreported, 11th December, 1987) held that the High Court could have jurisdiction where there was particular urgency in a case. The Supreme Court confirmed the reasoning of Costello P. on the preliminary issue. Costello P. had decided 'that because of the particular urgency in this case, the Court should not decline jurisdiction'. I am satisfied that in a case such as this, the court has power to decide the issues in dispute without first remitting the matter to the Circuit Court. The jurisdiction of the Circuit Court only arises in the event that I conclude the relationship between the parties is one of landlord and tenant."*

25. The issue of whether a landlord and tenant relationship presents is not an issue of controversy in the within proceedings. But what is perhaps worth mentioning by reference to *Esso Ireland*, lest there be misapprehension in this regard, is that that case does not recognise a free-standing "urgency" ground on which the comprehensive provisions of the Act of 1980 can in effect be side-stepped and proceedings such as those now presenting 'fast-tracked' through the Commercial Court. The Commercial Court is but a part of the High Court and a case cannot be 'fast tracked' through the Commercial Court that the High Court has no jurisdiction to hear. *Esso Ireland* seeks but to apply *Kenny Homes*, and if one returns to *Kenny Homes* and the full and complete text of the observations of Costello P., as quoted and approved by Lynch J. in the Supreme Court (and as replicated by this Court previously above), it is clear that what Costello P. did in *Kenny Homes vis-à-vis* the Act of 1980, and in light of the urgency presenting, was to determine whether, on the facts confronting him, there was a tenant and a tenement, observing, *inter alia*:

*"I concluded that...should the Court decide that (i) the agreement of the 1st October 1994 constituted a tenancy and (ii) the site constituted a tenement within the meaning of the Act then Section 28 of the Act applied and Lecorn would be entitled to retain possession pending the determination of the Circuit Court of the application for a new tenancy and I would accordingly dismiss these proceedings."*

26. To paraphrase, what Costello P. is saying in the last-quoted text is 'If I decide that Lecorn is a tenant and if I decide that I am confronted with a tenement, then I have no jurisdiction to go any further.' There is, with every respect, no intellectually respectable argument which could persuade the court that *Kenny Homes* means anything other than that.

*(v) Emo Oil Limited v. Oil Rig Supplies*

[2017] IEHC 594

27. One last case on which the plaintiff sought to place reliance is the recent decision of the High Court in *Emo Oil*. That was a case in which the plaintiff tenant sought an interlocutory injunction prohibiting the defendant assignee from trespassing and the defendant contended that it was entitled to renew its business tenancy. For two reasons, the court does not propose to consider that case in any detail. First, *Emo Oil* does not deal with the issue of jurisdiction. Second, McDermott J. was confronted in *Emo Oil* with a tenant in breach of its rent obligations (which appears to have yielded the compromise solution arrived at in that case, *viz.* an injunction granted but stayed on payment of rent until the determination of the High Court proceedings (so the injunction was 'sort of' not granted). No like breach presents here, making *Emo Oil* entirely distinguishable from the within proceedings on that factual difference alone.

## **VI. Conclusion**

28. For all of the reasons aforesaid, and having particular regard to the decision of the Supreme Court in *Kenny Homes*, the court is coerced as a matter of law into concluding that the within proceedings must now be dismissed for want of jurisdiction. The court will therefore grant the relief sought by Mr Murray at item (a) of his notice of motion. That being so, the court does not consider it necessary to consider the reliefs sought at items (b)-(d) of the said notice of motion. The court will hear the parties as to costs.