Neutral Citation 2012 [IEHC] 524

THE HIGH COURT

[2002 No.3592 P

[2002 No. 3591 P]

BETWEEN

PATRICK GERAGHTY AND GABRIEL GILMORE

PLAINTIFFS

AND

COUNTY COUNCIL OF THE COUNTY OF GALWAY, DOOLIN CONSTRUCTION LIMITED AND BY ORDER, CHARLOTTE SHERIDAN AND KEVIN WOODS CARRYING ON BUSINESS UNDER THE STYLE AND TITLE OF SHERIDAN WOODS ARCHITECTS AND URBAN PLANNERS

DEFENDANTS

SUPPLEMENTAL JUDGMENT of Mr. Justice Roderick Murphy dated the 13th day of October 2011

1. Substantive Proceedings

The court noted in its judgment on the substantive issues delivered on the 9th November, 2010, that liability had been accepted by the defendants and that the case had proceeded on assessment only.

In relation to this assessment, the court decreed the sum of €102,780 to include consequential damages in favour of the first named plaintiff, Patrick Geraghty. The court also decided that, in addition, that it would decree, subject to satisfactory evidence in relation to the loss of rent, a figure to be agreed by the parties or in default of agreement by the court.

In respect of the second named plaintiff, Gabriel Gilmore, who had not been in the position to give evidence at trial, that a figure of €75,055 represented a fair assessment of the direct and indirect costs associated with the remedial and reinstatement works on his property. It was accepted that Mr. Gilmore would give evidence in relation to the consequential damages claimed.

2. Evidence on Commission

On the 14th July, 2001, Mr. Barry Glynn, BL, acting as commissioner for evidence, heard the sworn evidence of Mr. Gabriel Gilmore and a transcript of his evidence thereof was before the court. It is useful to summarise that evidence. Mr. Gilmore stated that he was the owner of a public house, known as Higgins public house at Mountbellew and owned a house beside that premises. Mr. Tommy Higgins had rented the public house from him on a lease for five years and nine months, dated the 14th December, 1999 at weekly rent of €220. Mr. Higgins was in possession thereof to the 9th September, 2004 and was therefore there when the works were carried out by the defendants.

Mr. Gilmore said that he got a phone call from Mr. Higgins that the door of the premises was sticking. As a carpenter, Mr. Gilmore had a powered plane and thought that it was a matter of planeing the door. However, when he went down he found that workmen from the second named defendants had fixed the door.

He said he was not notified about the work to paving outside his premises where there were underground cables. He gave evidence of damage where a gap of two inches in the wall upstairs had appeared. The tenant continued in occupation until the 9th September, 2004, when his lease expired.

He said that his solicitor had asked the defendants to carry out works to rectify the damage, but it was not rectified. The tenant decided to leave and Mr. Gilmore returned his deposit of €12,000. He had not tried to get a tenant to take the premises since then given the way it was. He said he did not know what rents public houses in the town were getting since that date. He said that his licence lapsed, but could not say when. He said he would have to get the fire officer. He said that his solicitor had written to the fire officer who replied that given the way the building was a licence could not be got.

He said that the house beside the public house was then vacant and remained so. He was going to do it up. He said there was slight damage caused to his house which would costs roughly €5,000 to €6,000 to repair. He had not that kind of money and had health problems. He said that the damage was caused by the defendants, which caused devaluation to the premises. His intention was to rent the house and he had enquiries by word of mouth, not definite offers. The house is still un-let. The Door had to be "hacked up" and there was a slight crack that would have to be looked after. He had a claim for insurance. He was paying insurance premiums of around €4,000 for the pub which he paid up to the present year.

He said he had claimed for heat and light and had ESB bills.

A bar counter and some shelving needed to be removed. There were no stools or furniture. He claimed for storage for the other items and bad a quotation from PNF Construction Limited and from Barron's Self Storage.

He said he did not employ a quantity surveyor but he had paid Irish Drilling Limited, €2,100 being one half of the bill of the 30th April, 2003, between himself and Mr. Geraghty.

He lived eight to ten miles away and said he visited the premises regularly - two or three times a week. He was claiming for travel.

He said that his accountant, Mr. George White would give evidence in relation to goodwill. He said that there was a good weekend trade in the pub, but did not know what the turnover was.

He was devastated with the damage caused and worried that the "whole lot" would collapse out onto the street.

In cross examination, he confirmed that his claim in the sum of €17,997 for insurance from 2002 up to 2010. He agreed that if no damage had been caused he would have maintained the insurance cover.

He agreed that damage to the property in 2002 did not stop Mr. Higgins trading until the 9th September, 2004, on the expiry of his lease.

He said that he did not know what the procedure was to get Mr. Higgins to transfer the pub licence out of his named and back into Mr. Gilmore's name. He said he did not need the licence back in his own name. He thought he would just have to go to court again and get the licence.

It was put to him that there was somebody else in between Mr. Higgins and himself, a Ms. Catherine Carmel Purcell. He said he knew nothing about that and said that the licence and register was wrong. He said he did not think he had to make an application to renew the licence.

It was put to him that the defendants engineer, Dr. Brian Bond, had concluded that most of the movement caused large cracks in the party wall were old and had occurred a long time before January, 2002. Mr. Gilmore said he did not see them and would not agree that the buildings were in a generally poor condition. He did not disagree with the fact that the excavation carried out did trigger off some additional movement, but disagreed that most of the damage had previously occurred.

He said it was wrong to say that a further cracking did not make the properties any more unsaleable than they were prior to the building work of the second named defendant.

While he said that prior to January, 2002 it was correct that nobody would have been in the position to persuade a fire officer to provide a fire safety certificate. The question, in fairness, was put to him again by defendant's counsel that he was trying to portray the property as being in a very good condition so that he could recover all of this damage that he was "after doing up the bar". He replied that he "had put a new floor on it and got all of the electric done and the plumbing done". That was all he could tell counsel. He said he could not rent the pub out, because of the cracks in the front wall.

It was put to him that as of the 1st October, 2004, it was impossible to operate Higgins's as a pub because it had not licence and because he had decided that no tenant would be willing to take it up. Mr. Gilmore replied that if the wall fell the tenant could sue for loss of earnings.

He was asked about his claim for €12,400 for travel expenses, which he said was calculated by how many times a week he had to visit the premises. He said his accountant made that up as he had told him that he was going up and down there, two and three times a week.

He said he was not aware that the court had concluded that he was entitled to €75,055. He said he was maintaining the claim of €131,000 and agreed that in 2009, he raised a claim for €143,000. He thought that the judge's decision was €131,000.

He was asked whether his claim was in respect of the loss of the licence or for the restoration of the licence when he had the work done on the pub. He had no clue when he first discovered that the licence had lapsed.

It was then put to him that he had maintained a claim for alternative accommodation in the sum of €30,000. He said he had not. He was not saying that his solicitors were wrong: they would have to talk about that. He had no idea what it was about.

In relation to storage of goods he was asked why it was not until the 11th July, 2011, that he came up with an estimate. He said he did not know that piling was going inside and outside the building or what they were going to do with the building.

In relation to the engineering claim for €15,000 he accepted that if this Court had ruled it out, then that was it.

He said that there was no tenant in the house on the 15th February, 2001, but was looking for loss of rent.

He was asked about his claim for goodwill and replied that he had pretty good idea what it was. He replied that he had and agreed that he was not trading from Higgins's pub and that he did not have a clue what the turnover was. He did not know what entitled him to benefit from the sweat of Mr. Higgins's brow and agreed that it was not his goodwill.

He was asked about the claim in respect of heat and light, which he said covered the period from the time that Mr. Higgins left and agreed that the statement of claim was in respect of June 2002. It was put to him that there was no claim for heat and light in the amended claim of the 14th April, 2005, and the 11th July, 2005 or in the reply to particulars in September, 2006 or in the further claim of the 20th May, 2009. He said he thought he did claim.

He was asked what the basis was for the rent of £220 a week up until September 2004, being increased thereafter to €600 a week.

He agreed that it would not have been €600 a week in 2004, but said that they had taken advice from auctioneers. He said he did not have a clue when it had become €600 a week. He said that the letting price went up. He said it was correct to say that he had not had tenant before or after the events in 2002 in the house and that the increase in rent on the 15th January, 2005, was the going rate around. He said it was his accountant that made up that roughly and not himself.

It was put to him that his explanation of Mr. Higgins having to install the so called coffin refrigeration system entitled Mr. Higgins to have a reduction in rent. He did not know how much that system would cost. He said that Mr. Higgins had also put in shelving and a lobby which he supposed would cost around €200 each.

It was put to him that while still maintaining a claim for €131,000 for remedial works, though the court had ruled the sum of€75,055. He was not too sure that he was still maintaining that claim.

He disagreed that the remedial works would substantially improve the property and that the property would be considerably improved. He said he did not know how they were going to straighten out the wall. Counsel stated that the remedial works were to reinstate the

premises so that the front wall would be perfectly serviceable. The then agreed with that.

He said he did not have a claim for alternative accommodation and had no idea why that claim for €30,000 was being maintained.

On re-examination he said it was correct to say that the rent of £220 per week was fixed as of December, 1999. That concluded the evidence.

3. Evidence of Paul O'Gradv, MIAVI
The evidence of Paul O'Grady, MIAVI practising in Tuam, referred to Mr. Geraghty's and to Mr. Gilmore's premises. He described Mr. Geraghty's butchers and side shop which was in the best letting position. He said that the rent at present was between €250 and €300 per week and between 2002 and 2010 was between €200 and 225 per week with a peak in 2007. There was little available for rental. There was always a market for lock up shops.

He had not seen the premises over the shop but the evidence that a rent of €130 per week.

In relation to Mr. Gilmore's premises he said that the public house needed considerable expenditure. With a licence the rent in 2004 would have been €600 per week given that there was half acre included in the licence.

Without a licence the rent would be between €300 and €400 per week. He said it needed attention, was dangerous and unusable at present.

He said the value of the licence now was between €80,000 and €90,000 whereas in 2006-2007 it had a value of €145,000.

The value of the premises with the licence was €750,000 and without, €550,000 to €600,000 as a development site. The goodwill was built into that valuation.

The adjoining residential house had six to seven bedrooms and needed attention. The rent since 2003 was a €150 per week or €600 per month.

Insurance, if trading would be €1,500 to €2,000 per annum (the statement of claim gave a figure of €4,000 for 2010).

If derelict and not trading, it was difficult to get insurance.

Under cross examination, he gave the dimensions of Mr Geraghty's butchers shop as 150 to 200 square feet and the adjoining premises between 300 and 400 square feet.

He said that the rent was without consideration of good will. The top rent was €600 per week, which he agreed would require the premises to be refurbished. He agreed that on the basis of pre-existing damage and effects, it required substantial work that that would affect the rent price.

It was put to him that the rent paid by Mr. Higgins to Mr. Gilmore was €220 per week for a five year lease. He said that Mr. Higgins had done work and was responsible for tenant's repairs. The turnover of €3,000 to €4,000 per week in a pub is viable at a rent of €600 per week in order to survive. It turnover were lower than that then the tenant could not afford the rent of €600 per week rent. There were 26 pubs in Tuam which do not have adequate turnover.

He said the pub was not useable and was positively dangerous. He agreed that Mr. Higgins continued to trade until 2004 to the end of the lease.

It was put to him that Mr Moran, valuer for the defendants valued the premises at €500,000. Mr. O'Grady's evidence was €750,000 which included the residence. Mr. Gilmore's house would have a rental value of€150 per week if work were done. He was not familiar with the rent claim being made.

4. Evidence of Mr. Coyle
Mr. George Coyle, Mr. Gilmore's accountants since 1982, had access to his client's bank accounts and to insurance premiums paid in the sum of €3,365 in May 2004, up to €4,200 in 2010. The total from 2004 to 2010 was €25,926.

He said he the valuation of the loss of goodwill was €50,000.

The light and heat was €700 per week for four years.

The travelling expenses per 20 miles round trip from September, 2004 to September 2009 amounted to €19,785, at civil service rates of €1 per mile based on Mr. Gilmore's visits three times a week.

Mr. Gilmore's evidence on commission was that he lived 8 to 10 miles away and visited the premises regularly two to three times a week.

In cross examination, he said that he had invoices for insurance for two years in 2004 to 2006 and from 2009 to 2010.

He accepted Mr. Gilmore's figure of £140 per week for rent of the house. He said that the rent of £200 per week for the pub do not reflect the market. The peak was £600 per week. It was put to him that there was dip after that he said the €600 per week represented the present rental value which had previously been greater.

He said it was not possible to renew the licence because of the defects and he was aware that the licence had lapsed over five years beforehand in 2005.

5. Evidence of Tom O'Brien
Tom O'Brien, engineer, was a consultant forensic engineer. He said that the damage worsened after the collapse. The fire officer's certificate was on the basis of plans, compensation and upgrading. He said that in 2004, when he inspected the premises there would have been a major difficulty in getting the certificate.

In cross examination, it was put to him that the defendants' engineer had given evidence that cracking preceded the damage caused

by the defendants. He said that in renewing a licence the inspector was entitled to exact a higher standard. He said he could not talk about the pre-accident state in 2002. He agreed that the pub continued to trade until 2004 with the licence renewed.

Counsel for the defendants had put it to the witness that the rent for the residential flat by a Ms. O'Flaherty was €50 per week which continued after the incident, and suggested that the claim for consequential loss was exaggerated and referred to the following evidence:

Removal of fittings €14,052

Storage €14,080 for six months (at €450 per month) Costs of removal €850 and €317.

Rent for alternative premises £150 per week.

It was put to Mr. O'Brien that his evidence on the previous case for repairs and consequential losses were assessed by the court in this sum of€76,779 based on Mr. Arthur's evidence. Mr. O'Brien said he could not remember that.

It was put to him that there was no evidence of demand for the premises from bookies, hairdressers or accountants at the previous hearing.

He said that the rent had been paid in cash and was declared for tax. Counsel submitted that the claim for €60,000 was based on work taking six months, whereas the plaintiffs' engineer had said it would take two to three months

6. Evidence of Mr. Darren Good
Mr. Good, B.Comm. MSc ACA Accountant gave evidence that the rent was last received in 2003 and that at a €120 per week from the 1st January, 2004, to the present, would amount to €47,280.

In cross examination, he was asked what the net profit was from the butcher shop. He said that in 2010, Mrs. Geraghty's profit was €12,526 and Mr. Geraghty's was €35,761 being a total of over €48,000. There was not trading for two months that would be a loss of €8,000 and for six months of €24,000.

7. Evidence of Mr. John Sweeney
Mr. John Sweeney, a refrigeration engineer quoted a figure of €640 for each of two cold rooms of the butcher's shop to take down the plant and a figure of €14,052 to reinstall the plant, making a total of €3,518 on the assumption of€50 per hour. He said that he had been asked to quote some three to four weeks before the hearing.

8. Evidence of Pat Gilmore
Pat Gilmore, publican in Ballygar, Co. Galway was the brother of the second named plaintiff. He said he was assisting his brother as his right hand man and was involved in the case since 2001. He had engaged Mr. O'Brien, engineer and Pat Geraghty's solicitor. He said that his brother had got a stroke on the 25th May, 2010.

He referred to the travel expenses to Mountbellew, which was ten miles away. He had travelled once or twice a week. There was no agreement with his brother but, he, Pat Gilmore would expect travel expense in the sum of €4,758 for the period.

He said that he paid €300 for oil. He said that Mr. George Coyle had little or no contact with Mr. Gilmore.

He said that Higgins's pub was run by Mr. Gilmore from 1975 to 1999.

The house had been rented to a Mrs. Kilcummins from 1952 to 1990 and to Mr. Kilcummins to 1997/1998. He said legal problems had arisen when Mr. Kilcummins niece wanted possession. She left in 2001. Mr. Gilmore had proposed doing it up but after the work by the defendants, he was advised not to.

He said that the extractor unit, the counter, seating and porch, together with a tap unit of the public house had to be removed. The quotation from PH and from Barron had already been referred to.

He said he could not get a definite time for the refurbishment.

He said that the cost for removal was €1,798, for storage €1,187 and for transport €500 made a total of €3,485.

Mr.Gilmore was responsible for half of the drilling cost of €5,635, that is €2,818.

In cross examination, he said that he agreed that no bill had been presented to substantiate his claim for travel expenses in the sum of€ 4,758 in addition to the €20,000 claimed by his brother.

It was submitted by counsel that it was common evidence that no offers had been made and that the property was not with an auctioneer. He did not disagree. He agreed that the breakdown of the award made by the court on the 9th November, 2010, included works to the main bar area.

9. Mr. Colm Moran
Mr. Colm Moran, auctioneer, on behalf of each of the defendants. He had been in practice since 2002 and was familiar with Mountbellew.

He said that Mr. Geraghty's vegetable shop which he examined in 2010, measured 214 square feet. He said that Mr. O'Grady's evidence for €300 per week would be applicable to a larger premises. His valuation of rent was a €100 per week in the present climate and €120 to €130 in the boom. His figure for 2002 was also €120 to €130 compared to Mr. O'Grady's €200 to €225.

The alternative butcher's premises of 500 square feet was €250 per week. He felt that the rent of €600 per week in 2004 for Higgins pub was a little high. He said that the rent for a nearby pub in 2007 was €450. His valuation would be €500 for the subject premises. He said that in 2011 the market had changed and there was renegotiation with landlords giving a rent of some €300 to €350 per week. The trends from 2004 to 2007 at the peak led to insecurity from late 2008 on.

His capital value of the entire Gilmore property in 2002 was €580,000 and in 2010, €500,000. He said that without the licence in 2010, the rent would be €300. The value of the licence was €70,000.

He said he did not gain access Mr. Gilmore's house, but on the basis of the ground floor and three rooms upstairs, he would value the premises in 2002 at €150 per week. He agreed with the valuation of Mr. O'Grady.

In cross examination, he said he had not sold shops in the town. He had sold houses three years ago.

It was put to him that Mr. O'Grady was familiar with rents in Mountbellew. He said that he disagreed with Mr. O'Grady's valuation of€250 to €300 per week. The comparisons to Athenry were not good from a compensation point of view. He agreed that there were no hard facts to justify €100 per week.

He referred to the vegetable shop owned by Mr. Geraghty which had been producing a rent of €120 per week. Rents would increase from €120 to €130 per week average, but Mr. O'Grady's valuation was only for a larger property.

In relation to Mr. Gilmore's pub he said he had looked inside and outside. He said that the current rent for comparables were hard to sustain and that pubs without a licence would have a rent between €300 to €350 per week being closer to the lower figure. However, he would not disagree with Mr. O'Grady's figure of€300 to €400 per week.

His capital valuation of the pub with the licence in 2010 was €500,000. It would be difficult in 2011 to get €400,000 to €450,000. He disagreed with Mr. O'Grady's figure of €700,000 to €750,000.

Without a licence Mr. O'Grady had valued the premises as between €550,000 to €600,000. He said in the height of the boom that would have been so but was no longer so.

He valued a clear seven day licence at €70,000 (Mr. O'Grady had valued it at €80,000 to €90,000.)

Mr. Moran had said that the market is now more for Centra and filling stations.

Mr. Gilmore's house had two to three bedrooms, not seven bedrooms. He would value that at €130 to €140 per month in rent rather than €140 to €150 as suggested by Mr. O'Grady.

He said that good will was built in to the valuation, but that you would need trading figures to assess.

He referred to a pub on the comer of the square was not as big but a comer location, having an asking price of €450,000.

The court notes that this was not put to Mr. O'Grady.

10. Plaintiff's Submissions
Mr. Geraghty claimed a loss of rental income on the basis that it was not possible to rent because of the tort committed by the defendants. Mr. Geraghty was entitled to storage, removal and the cost of alternative premises.

The consequential loss of the public house was from September 2004 to date at a figure of €600 per week.

The licence for Mr. Gilmore's premises had lapsed in 2003, over five years ago and could not be renewed. It was impossible for Mr. Gilmore to renew the licence as the premises were not suitable.

Liability was only admitted at the eleventh hour in June 2011.

Counsel submitted that the claim of €70,000 to €90,000 was for the value of the licence; the loss accruing from the rental of the adjoining house was €300 per week; that insurance was €26,007; heat and light €700 by 6.75 equal to €4,725; storage €1,392 and removal €3,484.

In addition claims for travel for the sum of €20,000 for Mr. Gilmore and a further sum of€4,755 for his brother.

The plaintiff was also entitled to half the cost of the drilling.

10. Defendants Submissions
Counsel on behalf of the defendants submitted that that *Munnelly v. Calcon* applied that the onus was on the plaintiff to be fair. He said that *Shelly Morris* dealt with the consequences of an exaggerated claim and referred the court to the judgment of the 30th July, 2010, at page 13.

It was not appropriate for the court to engage in speculation.

Consequential loss depended on the foreseeability.

Mr. Geraghty's claim was exaggerated in relation to rental income, which was only given in July 2011, in relation to proceedings commenced in 2003, closed in 2006 and certified in 2009. At the time of the original trial to date, there was no claim for the defendants delay. The plaintiffs delayed in 2010 and 2011 in respect of reports and 2011 in respect of vouchers.

The renewal of Mr. Geraghty's claim for increased losses had been made at a time when the court had disallowed those losses. It was submitted that the exaggerated claim for €326,500 was not sustainable in respect of Mr. Geraghty's claim.

Counsel submitted in respect of Mr. Gilmore's claim that one year after the judgment, the defendant had to press his evidence on condition. He said that the loss of the pub licence as of May 2009 resulted in a claim by Mr. Gilmore for €160,000 for the loss of the licence and €7,500 to renew the licence.

Under cross examination, Mr. Gilmore conceded that it was either one or the other. Now the claim was for €70,000 to €90,000, not €160,000.

But Mr. Higgins stayed on after the damage. Mr Gilmore did not say why Mr. Higgins had not transferred the licence to Mr. Gilmore. He

had not tried to get a new tenant. The maxim *novus actus interveniens* applied. There was no evidence of objecting to renew. *Munnelly v. Calcon* require fairness.

Counsel submitted that if the licence had been renewed and a tenant secured, then there was no damage. €280 per week had been paid by the tenant and the claim was now for €600 per week. Mr. Gilmore had said that the €280 per week was said to be in consideration of works to the value of€400 and a cooling system put in by the brewery.

In respect of the house, there was no tenant nor was Mr. Gilmore looking for a tenant.

In respect of goodwill as he said had been abandoned in the witness box, but renewed in this hearing in the sum of €140,000. But the goodwill was that of Mr. Higgins and not Mr. Gilmore. The premise in the *Wagon Mound* regarding foreseeability applied. He submitted that there is no devaluation of the premises given the pre-existing state, the *Wagon Mound* principle was also applied here.

The claim for €700,000 and €30,000 for alternative accommodation was abandoned by Mr. Gilmore who said that was not his claim. However, the claim was not withdrawn.

Counsel on behalf of the plaintiffs in reply said that in June 2010, liability was admitted and the claim was for the natural and probable damages resulting.

There should be no punishment for exaggeration where a claim was made on advice on professional grounds. The court can weigh the case made by both parties.

The *Wagon Mound* principle applied relating to foreseeability.

11. Decision of the Court

11.1 Claims by both plaintiffs were largely unvouched, claims were made which had already been dealt with by the court and in some cases not foreseeable. The court accepts that it is a basic proposition that a defendant cannot be liable for an injury when it is not shown that these acts or omissions are a cause of in fact of that injury. This is clear from the statement in McGregor on *Damages* 18th Ed., 6-015, which applies both to the assumption that the premises were undamaged at the time of the tort to the equation of grounds of claim after the pleadings had been closed and, indeed, it would appear to have arisen since the date of the original hearing.

The court cannot award damages in relation to any headed special damage claimed unless is it satisfied that the loss was a probable consequence of an act of the defendants. This is the principle established in the *Wagon Mound Overseas Tankship (UK) v. Morts Stock and Engineering Company* [1961] A.C. 388 P.C. at 422. The defendants' liability depends on the reasonable foreseeabilty of consequential damage.

11.2 Mr. Geraghty's Claim

The court has already in its judgment of the 9th November, 2010, dealt with Mr. Geraghty's claim other than that relating to loss of rent. The court's award in that judgment was €102,780, in respect of a claim for €326,574 quantified as of the 20th May, 2009.

The court has carefully considered the submissions in relation to what appear to be further claims by Mr. Geraghty in respect of his loss other than that of vouching for rent lost. The court is not satisfied that Mr. Geraghty was unable to adduce evidence at the trial in relation to these matters and, notwithstanding counsel's submissions that the court should hear the evidence of further claims, is satisfied that there is no justifica6on for opening up a matter which is already *res judicata* other than the issue of loss of rent. The court has, in its judgment of the 9th November, 2010, and, in the context of the evidence given that it did seem that the claim for consequential damage by Mr. Geraghty was exaggerated.

The court should first of all consider what appears to be a new claim for storage, dismantling and relocation of two cold rooms and the removal of the shop front, the counter and the shelving quantified in or about €10,000 including VAT. A further claim was made for alternative premises in the sum of €3,600.

The court is satisfied that the castings prepared by Mr. Arthur specifically made provision for the removal and refitting for its units and for storage of goods and work to shop front and recording the sums covered by the award already made by the court in its assessment of reinstatement costs.

Mr. Paul O'Grady's evidence in relation to Mr. Geraghty's rental value of €200 to €300 for the butcher's shop and vegetable shop of €200 to €300 per week was in excess of that assessed by Mr. Moran in the sum of €100 in the present climate and €120 to €130 from 2002 onwards.

Mr. Darren Good, Mr. Geraghty's accountant, said that the last rent received was in 2003 when a rent of €7,073 received in 2002 reduced to €5,608 in 2003. No reason was given as to why there was a decrease from 2002 to 2003. The court accepts that as a consequence of the tort by defendants, that it would have been difficult to let the premises without some remedial work affected.

The court is satisfied that the claim for €26,000 for loss of rent has already been determined, subject to satisfactory evidence. The court is now satisfied that this sum is appropriate and will not consider any further evidence in relation to the matter.

11.3 Mr. Gilmore's Claim

In respect of Mr. Gilmore's claim the court was satisfied that a figure of €75,055 represented a fair assessment of the direct and indirect costs associated with the remedial and reinstatement works on Mr. Gilmore's property as of the 9th June, 2010. Mr. Gilmore's claim for loss and damage was quantified as of the 20th May, 2009, in the sum of €712,274 together with liability accepted by the defendants. The case proceeded on an assessment only.

As Mr. Gilmore did not give evidence in relation to consequential loss, this matter was the subject of evidence on commission taken on the 14th July, 2011 and the further evidence given at this second hearing.

The court agrees with the submissions of counsel for the defendants that the defendants could not have foreseen that Mr. Gilmore would allow the pub licence to lapse on advice or otherwise and further allow more than five years to elapse prior to making any attempt to renew the licence thereby forfeiting the renewal right.

Indeed the court is satisfied that Mr. Gilmore's evidence in this regard was honest and straightforward. In his own words he had "not got a clue" when the licence expired and, indeed, did not appear to realise that it had to be transferred to him.

He agreed that Mr. Higgins continued in possession on to the 9th September, 2004, notwithstanding the damage to the premises.

He also agreed that the goodwill was that of Mr. Higgins, notwithstanding that he had run the pub up to the time that Mr. Higgins took over in 1999.

While he did not agree with counsel that the evidence given by Dr. Bond as to the state of repair prior to the damage caused would have caused a difficulty for the renewal of the licence, it was submitted on his behalf that the licensing authority were entitled to take a higher standard in relation to the transfer.

It follows that the claim for goodwill and the claim for the loss of the licence or alternatively, for the renewal of the licence, is not sustainable.

Mr. Gilmore's claims for insurance premiums paid from 2004 to 2006 and to 2009 and 2010. He agreed that whether or not the damage had occurred that he would have continued to insure the premises. It seems, for this reason that the claim for insurance does not result from the damage caused as it would have to be, according to Mr. Gilmore's evidence, in place in any event.

In respect of the claim for loss of rent this, necessarily is in respect of the loss of the rent of the unlicensed premises as from the 9th September, 2004.

However, the court notes that no effort was made to rent the premises since September 2004, even if Mr. Gilmore's evidence was that he did not look for new tenants "on legal advice".

The court is satisfied that this conscious decision not to mitigate damages and find a replacement tenant for over seven years even at a much reduced rent is a matter to which the court should take into account in the assessment of loss. It is particularly so when they were delays in bringing forward a claim prior to Mr. Gilmore's illness.

The court has also got to take into account that Mr. Higgins continued to trade after the initial damage occurred. There was no evidence that there was such damage resulting thereafter which would have made the premises unlettable due the premises being dangerous.

Mr. Higgins was paying £220 per week up to September 2004. The court has carefully considered the reasons given by Mr. Gilmore for that being, in his submissions, the lower rent. The evidence in relation to the coffin cooler and the shelving costs in the order of €400 being an obligation on the licensee does not justify the full rent being €600 per week from September 2004 onwards.

Moreover, the pre-existing damage identified by Dr. Bond and accepted by the court as affecting the market value of the property prior to January 2002, would have had an effect on the rent achievable. The court accepts Mr. O'Grady's evidence in this regard.

The court is of the view that the failure to mitigate loss renders the appropriate loss of rent per week to be €300 per week. The court thinks it appropriate that that loss should be limited to six years after 2004.

The claim for the rent of the house at €51,260 has be determined in the light of the evidence that Mr. Gilmore had no definite offers and had not listed the property with an auctioneer to rent the same. Moreover, Mr. Gilmore accepted that there had been no tenant in place in the house as of February 2002.

Mr. Gilmore's valuer accepted that any commercial use of the house would be dependant on planning which would be difficult to obtain.

No proof of any tenancy prior to January 2002 was adduced.

The court has also to take into account the general state of the property as of January 2002, in addition to as not having been let. The court is also concerned that no real effort having been made to seek a tenant.

In the circumstances the court will disallow the claim as to the rent of the adjoining house.

The claim is made in respect of travel expenses in the sum of €19,785. The court has already noted that Mr. Gilmore's evidence was that he lived eight to ten miles away and would have visited the premises two or three times a week.

The claim appeared to have been made on the basis of ten mile distance and for three times a week.

In cross examination Mr. Gilmore was unable to explain how the figure had been arrived at. He referred to his accountant having made that up and he accepted that he had no idea how the sum was calculated.

The court takes into account that the pub was trading up to September 2004, and, accordingly, was not vacant. No evidence was given as to why it was necessary to attend the premises two to three times a week. The court is satisfied that no purpose had been identified for the visits either while the pub traded or after it closed.

There is no evidence with regard to fuel or maintenance costs apportioned. It seems inappropriate, in any event, to calculate on the basis of civil service mileage rates.

The claim by Mr. Gilmore's brother in respect of travel expenses is more unsatisfactory. No reasons were given, no expenses were itemised and, even if there was some necessity of visiting the premises on occasions, once Mr. Gilmore became ill, this was not clear from the evidence of Mr. Gilmore's brother.

The court, in the circumstances, will allow a figure of €1,000 in respect of travel expenses for Mr. Gilmore and will not make any award in respect of Mr. Gilmore's brother as there was no arrangement made between them as to the term of recuperation of unspecified expenses.

The claim for alternative accommodation would seem to be unjustified given the evidence of Mr. Gilmore, who said he had "no idea

what it was about" and would have to talk to his solicitor.

In relation to the claim for half the sum due to Irish Drilling Limited on foot of an invoice of the 30th April, 2003, in the sum of €2,817.53 the defendants required an invoice and receipt.

The receipt dated the 30th April, 2003, in the sum of €5,635.06 was included in the papers presented to the court. I accept the evidence of Mr. Gilmore that this was paid and accordingly make an award in the sum of €2,817.

The court will, accordingly, make a decree as follows:

Loss of Rent: €300 per week for 6 years €93,600

Travel: €1,000

Irish Drilling: €2,817

Total: €97,417