

THE HIGH COURT**Record No. 2015/102CA****IN THE MATTER OF:****EJECTMENT CIVIL BILL FOR OVER-HOLDING****Between:****DONAL O'CONNOR****(PERSONAL REPRESENTATIVE OF JOSEPH O'CONNOR DECEASED)****Plaintiff****- and -****JOHN HARRINGTON****Defendant****JUDGMENT of Mr Justice Max Barrett delivered on 12th February, 2016.**

1. This is an application to discharge an order of the Master of 3rd July, 2015. It is brought under O.63, r.9 of the Rules of the Superior Courts (1986) as amended. The Master's order extended the time available to Mr Harrington to appeal against an order of the Circuit Court of 5th March, 2007. The overall history of these proceedings is now so protracted and confusing, especially given the alternative versions presented by each side, that the court reserved judgment largely so that it could prepare a chronology of events from the documents presented to it and determine the truth of what is the issue arising and what is being presented to the court for decision.

2. There is a lot of detail in the said chronology, which is appended hereto and forms a part of this judgment. In truth, however, only six key matters need to be noted. First, an ejectment civil bill for over-holding issued on 7th June 2006. Second, the Circuit Court, on 5th March, 2007, acceded to an application that the initial plaintiff be substituted by another. Third, on 9th June, 2015, the Circuit Court granted possession of premises and mesne rates to the personal representative of the late plaintiff. Fourth, Mr Harrington, the disappointed 'tenant' has brought an appeal against the decision of Circuit Court. Fifth, Mr Harrington has also sought to bring a separate appeal against the order of 5th March, 2007. Sixth, on 3rd July, 2015, Mr Harrington appeared before the Master and asked for an extension of time to serve and lodge notice of appeal against the order of 5th March 2007. As good a hint as any that matters were not made entirely clear to the Master is that the Order which eventually issued under his auspices made reference to a previous order of the Circuit Court that was never in fact made.

3. The dispute that arises concerning the order of 5th March, 2007, is that it states itself to have been ordered by consent. However, Mr Harrington contends that he never consented to the making of this order and thus, implicitly, that there was some deficiency or, to use ordinary parlance, even some 'shenanigans', in how it was obtained. To a certain extent, matters have now been overtaken by the fact that the Circuit Court gave a full and final order in respect of the over-holding action on 9th June, 2015. However, it seems to the court that if there was some alleged deceit perpetrated in the proceedings which led ultimately to the issuance of the order of 9th June (and the court makes no finding either way in this regard), then it is open to Mr Harrington to make that point in the context of his appeal against the order of 9th June. By allowing Mr Harrington extended time to file an appeal against the order of 5th March 2007, the Master has in effect created a situation in which there are two appeals arising in the context of the same proceedings, when in fact all issues arising are capable of 'travelling together' and being dealt with in Mr Harrington's appeal against the order of 9th June.

4. Having regard to all of the foregoing, and to the appended chronology, the court will (i) discharge the order of the Master in respect of which application is made, (ii) substitute an order striking out the proceedings known by reference number 2015/102CA (the proceedings concerning the order of 2007), and (iii) leave extant the proceedings known by reference number 2015/107CA (the appeal against the order of 2015). For the avoidance of any doubt, and given the previous confusion that has arisen in this regard, the court would respectfully draw Mr Harrington's attention to the fact that the parties to the proceedings are titled as shown on the first page of this judgment; however, that they are so titled does not prevent him from making any point he may wish to make in this regard on appeal.

APPENDIX**CHRONOLOGY OF CERTAIN EVENTS ARISING**

26th April 2004 Mr Joseph O'Connor, landlord, (since deceased) enters into

weekly tenancy with Mr John Harrington of Monsea, Puckane.

13th February 2006 Notice to Quit served on Mr Harrington.

24th March 2006 Tenancy terminates pursuant to Notice to Quit.

7th June 2006 Ejectment Civil Bill for Over-holding issues.

2nd October 2006 Circuit Court orders substituted service of all subsequent documents in matter by prepaid ordinary post at Monsea, Puckane, Nenagh. Co Tipperary.

26th October 2006 Mr Harrington enters an Appearance

22nd January 2007 Notice of Motion issues seeking substitution of 'Joseph

O'Connor, Nenagh Shopping Centre, Martyrs Road, Nenagh, Co Tipperary' in place of 'O'Connors Shopping Centre Limited'.

5th February 2007 All parties in court. Matter adjourned as Mr Harrington indicated that he had belatedly received the Notice of Motion.

5th March 2007 Circuit Court orders substitution of 'Joseph O'Connor, O'Connor Shopping Centre, Martyrs Road, Nenagh, Co Tipperary'. Order states itself to be by consent.

27th June 2007 Mr Harrington enters a second Appearance.

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10th April 2014 Mr Donal O'Connor and Ms Nora O'Connor (personal representatives of Mr Joseph O'Connor) substituted as plaintiff.

10th July 2014 Mr Donal O'Connor (personal representative of Mr Joseph O'Connor) substituted as plaintiff.

24th February 2015 Order for substituted service to be made by Gardaí.

6th March 2015 Order that Notice of Motion and Order be advertised in certain newspapers and documents affixed to door of Mr Harrington's premises.

28th May 2015 Notice of Motion from Mr Harrington seeking an order extending the time for serving and lodging Notice of Appeal against Circuit Court order of 5th March 2007. Notice names 'O'Connor Nenagh Shopping Centre Limited' as plaintiff.

9th June 2015 Circuit Court order issues granting possession of premises and mesne rates to Mr Donal O'Connor (as personal representative). Stay on judgment refused.

10th June 2015 Notice of Appeal issues from Mr Harrington against Circuit Court judgment of 9th June 2015.

11th June 2015 Notice of Motion issues from Mr Harrington seeking that High Court stay Circuit Court order of 9th June pending appeal.

3rd July 2015 Master of High Court orders extension of time for serving and lodging Notice of Appeal against Circuit Court Order of 5th March 2007. Order refers to previous Order of Circuit Court that was not made.

6th July 2015 Mr Harrington enters a High Court appeal against the Circuit Court judgment of 5th March, 2007.