THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 93

[2015 No. 621]

The President
Sheehan J.
Stewart J.

BETWEEN

NEIL HUGHES, JOAN CUMMINS-MOORE AND

FRANCIS MOORE

PLAINTIFFS/RESPONDENTS

AND

PAUL COLLINS

DEFENDANT/APPELLANT

JUDGMENT of the President delivered on 20th March 2017

1. This is an appeal by the defendant, Mr. Paul Collins, against a High Court order made on 1st December 2015, granting an interlocutory injunction to the first plaintiff, Mr. Neil Hughes. The High Court made an order restraining Mr. Collins from entering on or otherwise interfering with the dwelling and land known as Blackhall House Stud, Bannow, County Wexford. Mr. Hughes is a chartered accountant who was appointed receiver over that property, among others, in the ownership of the second and third plaintiffs, Ms. Joan Cummins-Moore and Mr. Francis Moore. The Moores mortgaged the premises to IIB Bank (later named KBC Bank) by deed of 30th July 2007. The defendant, Mr. Collins, went into possession of the property under a letting agreement dated 1st October 2011, made with the second plaintiff, Ms. Joan Cummins-Moore. The term was two years and Mr. Collins paid the full term rent of €10,000 in advance. The bank appointed Mr. Hughes as receiver on 11th May 2012, and he instituted these proceedings as receiver and agent for the Moores as landlords on 25th June 2015.

2. Binchy J. heard the application by Mr. Hughes over two days and delivered his judgment on 27th November 2015, in which he set out his reasons for rejecting Mr. Collins's arguments and granting the injunction sought. They may be summarised as follows:

> (a) The court held that the receiver had terminated the tenancy held by Mr Collins on 28th January 2014, by notice served on 25th November 2013.
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> (b) The High Court had jurisdiction in the matter, notwithstanding the provisions of the Residential Tenancies Act 2004, excluding the jurisdiction of the courts in disputes that may be referred to the Tenancies Board for resolution. That was the case for two reasons. First, although Part 4 of the Act applied to the tenancy created by the letting agreement so that the exclusion of jurisdiction under s. 182(1) was engaged, the dispute was out of time for reference to the Board under s. 80 because more than 28 days elapsed after receipt of the notice that the receiver maintained was served on 25th November 2013. The court was satisfied that Mr. Hughes had complied with the requirements of service prescribed by s. 6 of the Act.
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> (c) The second reason for exclusion of the Board was that Mr. Collins had availed himself of an alternative remedy, namely, High Court proceedings, which were a bar to a reference to the Board, pursuant to s. 9(1) of the Act.
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> (d) The court rejected other arguments advanced on behalf of Mr Collins: as to alleged failure by Mr. Hughes to notify Mr. Collins under s. 12(1)(e) of the name of the person authorised to act on behalf of the landlord - the court held that Mr. Hughes had complied by letter; that Mr. Collins was in possession of the property under an order made by Cross J. in the High Court - the court referred to the subsequent order of Murphy J. setting aside the previous judgment as irregularly obtained; the receiver's efforts to recover possession by legal process did not represent failure to come to court with clean hands or unlawful disruption of Mr. Collins' rights; the fact that the receiver had challenged the validity of the letting agreement at first did not impair his entitlement to proceed on the basis that it was valid; a term in the agreement as to extension thereof or purchase of the property did not furnish a defence and finally, the notice of termination was not invalidated for non-compliance with s. 62(1)(b) of the Act, requiring signature by the landlord or his authorised agent because Mr. Hughes signed the notice as receiver and had notified Mr. Collins that, as receiver, he was the agent of Ms. Cummins-Moore.
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> (e) The applicant, Mr. Hughes, had established a case to be tried and had made out a strong case that he was likely to succeed at the trial. The receiver was properly appointed under the mortgage whereby the Moores had secured the property to the bank. The defendant, Mr. Collins, had, at the date of judgment in the High Court, been in occupation for more than two years without paying any rent. The receiver had given an undertaking as to damages and they would be an adequate remedy for Mr. Collins should he defeat the receiver's claim. Mr. Hughes had made a reasonable offer to leave Mr. Collins in possession for some 13 months, but the latter had not accepted it. Mr Collins had indicated willingness to vacate if he was paid a nominated sum. The receiver wanted to dispose of the property and apply the proceeds in reduction of the Moores' debt, which was increasing as time passed. The balance of convenience favoured the granting of the injunction and the other legal criteria were satisfied in the circumstances.

3. Mr. Collins's appeals to this Court against the decision that the exclusion of the jurisdiction of the courts did not apply (Grounds 1 to 6); in respect of the finding as to the order of Cross J. of 3rd April 2014 (Ground 7); the second and third plaintiffs, the Moores, were guilty of intimidation and harassment of the defendant, Mr. Collins, which conduct infected the application brought by Mr. Hughes and thereby deprived it of the character of clean hands (Ground 8) and the High Court was wrong to hold that there was a very strong case or a strong case or a serious issue to be tried, by reason of Grounds 1 to 7 (Ground 9).

Summary of the Appellant's Submissions

The Residential Tenancies Act 2004
4. Under s. 28 of the Act, provided that the tenant has been in continuous occupation of the property for a 6-month period, then the tenant is entitled to a 4-year tenancy dating back to the initial date of tenancy. An exception to this entitlement arises in s. 28(3) in circumstances where a notice of termination has been issued within the relevant 6-month period. This is known as a "Part 4 Tenancy". A "further Part 4 Tenancy" may be obtained pursuant to s. 41 of the Act, where the initial "Part 4 Tenancy" has elapsed without the issuing a notice of termination. Under such circumstances, another 4-year tenancy shall apply. Mr. Collins submits that he was in receipt of both and therefore entitled to tenancy from 2015 until 2019.

5. The Act places an important emphasis on the role of the PRTB in dispute resolution procedures. Mr. Collins highlights that s. 182 of the Act prevents court proceedings being instigated where the dispute may be referred to the PRTB. He further notes that Binchy J. accepted in principle that the underlying dispute i.e. the validity of the notice of termination, fell within the PRTB's remit. It is suggested that the learned High Court judgment misapplied s.182 through the reliance on the 28-day time-limit found in section 80. The dispute does not solely revolve around the notice of termination, but also breach of the lease, breach of the landlord's obligations and the standard of the dwelling.

6. Mr. Collins further submits that s. 80 is irrelevant in that it applies only to a notice of termination that has been appropriately served. In this case, it is alleged that the notice of termination was void ab initio as it had not been duly served as per s. 6 of the Act. Additionally, it is argued that no notice was received indicating that Mr. Hughes was authorised to act on behalf of the true landlord's behalf under section 12(1)(e). Similarly, the notice of termination gave no indication that it was being effected by the landlord as required by section 62(1)(b). Indeed, the nature of the notice itself is questioned, given that the letter seemingly denies the very existence of a lease.

7. Part 5 of the Act provides the circumstances in which a tenancy may be terminated by either party. This requires a valid notice of termination. Mr. Collins argues that in the absence of such a notice, s. 58(1) prohibits the issuing of the current proceedings to affect the termination of tenancy. Furthermore, it is submitted that any attempt to terminate a tenancy where a dispute has been refereed to the PRTB runs foul of s. 86(1) of the Act. Mr. Collins accepts that under s. 91(1), no one may refer a dispute to the PRTB where they have sought to avail themselves of an alternative remedy. No remedy has been sought in relation to s. 58(1) and the PRTB considers the matter to be a live dispute.

8. Finally. Mr. Collins submits that Binchy J. failed to have sufficient regard for the statutory obligations of landlords contained in s. 12 of the Act. It is argued that individually and cumulatively these indicate a misunderstanding and under-appreciation of the provisions of the Act.

The Alleged Abuse of Process
9. Mr. Collins submits that the bringing of the current proceedings was an abuse of process. He points to the pre-existing High Court proceedings in which Cross J. issued orders in his favour. The parties appeared before Cross J. the same day that 2014 proceedings were instigated. The High Court judge noted that his orders would stand unless otherwise rescinded or set aside.

10. In *Reichel v. Magrath* [1889] 14 AC 665, it was made clear that attempts to re-litigate through a change in form would not be tolerated by the courts. The Supreme Court in *McCauley v. McDermott* [1997] 2 ILRM 486, emphasised that they had to engage in a careful balancing act between the need to avoid injustice and value in upholding the doctrine of *res judiciata*. As was noted by Keane J:

> "The inherent jurisdiction to strike out proceedings as being an abuse of process should. . . be exercised only with great caution." (p. 497)

In *Dalton v. Flynn* [2004], an abuse of process was found where one of the parties attempted to subvert an existing order of the High Court. Similarly, in *Kelly v. UCD* [2009] 4 I.R. 163, McKechnie J. highlighted the problem of "collateral challenges" to matters which had already been determined (p. 172].

Clean Hands
11. Mr. Collins alleges that the respondents have sought injunctive relief in circumstances where they have harassed and intimidated him and his family. As such, he argues they have not come to equity with clean hands. Moreover, it is submitted that Binchy J. did not have sufficient regard to this maxim when making his decision.

12. It is argued that the alleged conduct falls within the level of moral and legal depravity considered articulated by Eyre LCB in *Dering v. Earl of Winchelsea* [1787] Cox 318 [p. 319] and imported into Irish jurisprudence by Finlay CJ in *Curust Financial Services Ltd v. Loewe-Lack-Werk Otto Loewe GmbH & Co. KG* [1994] I.R. 450 [p. 467]. A three-point test was proposed by *Murphy J. in Kavanagh v. Caulfield* [2002] IEHC 67:

> "Three questions need to be answered: First, whether there has been an illegality of which the Court should take notice and, second, whether in the circumstances it would be an affront to the public conscience if by affording him the relief sought the Court were seen to be indirectly assisting or encouraging a criminal act. Thirdly, the Court must be satisfied that the contract has not been otherwise rendered ineffective." [Para.7.1]

13. In contending that the respondents have engaged in such moral turpitude, Mr. Collins cites the case of *Coatsworth v. Johnson* [1886] 54 LT 520, in which specific performance was denied where a tenant breached the terms of the lease.

Interlocutory Injunctions
14. Mr. Collins points to well-settled jurisprudence outlining the principles which apply when seeking an interlocutory injunction. The *locus classicus* in this regard is *Campus Oil v. Minister for Industry (No.2)* [1983] I.R. 88, which outlines a number of criteria. Firstly, they must demonstrate a bona fide question to be tried. Secondly, they must show that damages will be an adequate remedy in the event the court finds against the party for whose benefit the injunction was granted. Thirdly, the granting of the injunction lies within

the balance of convenience. Finally, the court must consider the value in maintaining the status quo.

15. In *Allied Irish Banks v. Diamond* [2012] 3 I.R. 549, Clarke J. noted that the *Campus Oil* test must be further informed by the underlying need to avoid the path that leads to the "greatest risk of injustice" [pages 570-571]. Where a mandatory injunction is sought, this underlying principle requires a higher standard than a bona fide question to be tried. Mr. Collins submits that the current proceedings require the respondents to show that they have "very strong case". As Clarke J. held:

> "In order to minimise the overall risk of injustice, the court requires a higher level of likelihood about the strength of the plaintiff's case before being prepared to make such an order". [p. 572]

16. It is highlighted that property rights, in particular, are subject to this higher standard. Mr. Collins cites the case of *Dublin Corporation v. Burke* [2001] IESC 81, which also concerned a landlord-tenant dispute. The Supreme Court rejected an approach that would have allowed Dublin Corporation to remove the defendant from the premises by way of interlocutory injunction. Geoghegan J. noted *inter alia*:

> "If the facts as set out in that letter prove correct it would seem likely that Mr. Burke would be held to have been a tenant from month to month of the unit which he occupied. If so, it is not suggested that that tenancy has ever been terminated. As long as it has not been terminated and assuming that the tenancy exists, Mr. Burke is entitled to occupy the unit in whatever form he wishes and irrespective of whether Landlord and Tenant Act rights would arise or not upon termination by notice to quit. But given the possibility of rights under the Landlord and Tenant Act, there can be no doubt, in my view, that if the position is to be viewed on the basis of balance of convenience, the balance of convenience can only be in favour of refusing an injunction in so far at least as it relates to the unit the subject matter of the alleged tenancy. It would be extremely speculative and difficult to assess damages and given that a solid property right might effectively be lost on foot of an interlocutory injunction I would not consider that damages could be an adequate remedy. But even before one comes to consider the balance of convenience, I am extremely doubtful that there would even be a prima facie case for an injunction where a defendant with some back-up evidence (if ultimately accepted) is alleging an actual tenancy in the premises and the plaintiff is for all practical purposes merely sceptical of the truth of the allegation."

17. Mr. Collins submits that the onus is on the respondents to demonstrate that they have a strong case in circumstances where they sought a mandatory injunction. Having failed to meet this standard, it is submitted that Binchy J. erred in granting the injunction in the High Court.

18. Furthermore, it is argued that the respondents would fail to meet the baseline Campus Oil principles. Firstly, Mr. Collins submits there is no bona fide question to be tried. In so doing, he relies on the existence of related proceedings from 2012, and the lack of engagement from the respondents in that matter. Mr. Collins also points to the unresolved PRTB complaints alongside his lawful occupation of the property. The failure of the landlord and their agent to allow Mr. Collins have peaceful enjoyment of the property is also proffered as an example of the respondents' lack of bona fides. Additionally, Mr. Collins relies on his own personal investment in the property and the understanding that he had an option to purchase it in the future.

19. Secondly, Mr. Collins highlights the inadequacy of damages as a remedy in the circumstances. He submits that they have invested all their savings into the property and have not received the peaceful enjoyment they were entitled to. The dispute and conduct of the respondents has had a negative impact on their physical and mental wellbeing along with their financial stability. Mr. Collins points to Clarke J's decision in Allied Irish Banks v. Diamond where it was held :

> "The mere fact that it may. . . be possible to put a value on property rights lost does not, of itself, mean that damages are necessarily an adequate remedy for the party concerned. . . " [para.96]

20. Finally, it is argued that the balance of convenience favours allowing the appeal. Mr. Collins notes his lawful occupation of the property as his sole residence and his statutory "Part 4 tenancy" which evolved into a "further Part 4 tenancy". Aside from the aforementioned issues pertaining to the abuse of process, peaceful enjoyment and equitable considerations, there is value in maintaining the status quo pending the outcome of the trial and the Respondents would not be prejudiced in so waiting.

Summary of the Respondents' Submissions

The Residential Tenancies Act 2004

21. The respondents highlight that a notice of termination in relation to a "Part 4 Tenancy" is governed by s. 34 of the Act. For the purpose of the present case, it includes circumstances where:

> "The landlord intends, within 3 months after the termination of the tenancy under this s., to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling."

The relevant notice period is 56 days.

22. It is not disputed that Mr. Collins had an entitlement to possess the property until 1st October 2013. Mr. Hughes had argued against the validity of the lease and tenancy on account of it having been entered into without the knowledge or consent of KBC Bank, contrary to the terms of the mortgage. The PRTB rejected that argument and Mr. Hughes subsequently adopted the tenancy. However, the respondents reject the notion that Mr. Collins has an entitlement to a "further Part 4 Tenancy". Mr. Hughes notes that Mr. Collins has not paid rent since October 2013. Furthermore, a notice of termination was served on Mr. Collins within the six-month period allowed for. It is argued that the notice was valid and generous with its notice period of 64 days, allowing Mr. Collins to remain in the property until 28th January 2014. Additionally, Mr. Hughes provided reasons, namely, his intention, as receiver, to sell the property.

23. Mr. Hughes emphasises that a number of forms of service were adopted to ensure adequate service of the notice of termination was affected in line with s. 6 of the Act. The learned High Court judge was of the opinion that for the purpose of the interlocutory matter only, he was satisfied that Mr. Collins had received the notice. This decision is said to only inform Binchy J's view as to whether or not the respondents had a strong prima facie case.

24. Mr. Hughes submits that he complied with the provisions of s. 12(1)(e) with respect to identifying himself as an agent of the landlord. He points to the letter of 31st October 2012, wherein he describes himself "as agent of the borrowers, Mr. Franny Moore and

Ms. Joan Cummins". Additionally, s. 62(1)(b) only requires that a notice be effected by a landlord or their agent. Where there is evidence of Mr. Hughes identifying himself as such an agent, it is submitted that no question of invalidity under s. 62(1)(b) can arise.

25. It is suggested that to the extent that Mr. Collins contends that the proceedings are invalid and the dispute should be before the PRTB, the 28-day time limit provided for doing so under s. 80 of the Act has elapsed. Consequently, Mr. Hughes submits that there is no longer a dispute that is capable of being referred to the PRTB and s. 182 does not apply. The respondents argue that notwithstanding s. 80, Mr. Collins would be precluded from referring this question to the PRTB by virtue of his seeking of certain orders in the High Court. By doing so, he has chosen an "alternative remedy" as envisaged by s. 91 of the Act. The involvement of the High Court prevents the PRTB from being an appropriate forum for addressing this dispute as this could lead to an undesirable inconsistency in results. Mr. Collins's attempts to involve the PRTB further seeks to "usurp the jurisdiction of the High Court", particularly in circumstances where the latest referral was made 18 months after the notice of termination was served.

26. The respondents argue that s. 58 has no bearing on the present proceedings as the manner in which it has served the notice of termination is in line with the requirements set out in Part 5 of the Act. Indeed, they have gone beyond the minimum notice period in doing so. Mr. Collins's attempted reliance on s. 86's prohibition of the termination of a tenancy prior to the outcome of a dispute before the court cannot succeed because he initiated the PRTB proceedings in question at the last minute as a means of frustrating the courts following the commencement of these proceedings and after the making of an application for interlocutory relief.

27. The respondents reject the assertion that they have, individually or collectively, breached the statutory duties of landlords under s. 12 of the Act. Additionally, they argue that even if this were the case, that would not stop them from terminating the tenancy in a manner consistent with the provisions of the 2004 Act.

The Alleged Abuse of Process
28. The respondents take issue with Mr. Collins's submissions in this regard as they were not articulated in the High Court and do not form part of the notice of expedited appeal. It is also emphasised that Mr. Collins has not presented the court with a reason for the inclusion of these additional arguments. Accordingly, they should not be considered.

29. Notwithstanding their objection to the making of such an argument on a procedural level, the respondents also submit that it is of no merit on a substantive level. They argue that current proceedings are not an attempt to re-litigate what has come before. Instead, the challenge to Cross J's order has the goal of setting aside what Murphy J. has recognised as being an irregularly obtained order. The current proceedings aim to enforce the notice of termination and are connected with the other proceedings only in that they are consistent with the intentions of Mr. Hughes as receiver.

Clean Hands
30. The respondents categorically deny wrongdoing of this kind. They highlight that Mr. Hughes, despite feeling that there was no legally binding lease in place, was willing to permit the Collins family to remain in the property until the end of their agreement. From Mr. Hughes's perspective, a dispute only arose at the point at which that offer was denied. It is suggested that it would be untenable if the simple act of a receiver or landlord attempting to enforce their rights to possession could prevent them from seeking an equitable remedy.

31. Furthermore, Mr. Hughes contends that where there is morally problematic conduct alleged against Mr. Moore and Ms. Cummins that should not deny the receiver and the bank their entitlements. Given that those alleged wrongdoing are the subject of other proceedings, if Mr. Collins was to be successful in proving such allegations, then the remedy would be one for damages and is unrelated to the receiver's obligations.

Interlocutory Injunctions
32. The respondents accept that their mandatory injunction application requires them to demonstrate a strong case. They rely on the judgment of Birmingham J. in Ferris v. Meagher [2013] IEHC 380, wherein the learned judge granted the receiver interlocutory orders against a tenant under similar factual circumstances, the lease having been invalid under the terms of a mortgage. It was held that there could be no arguably defence in those circumstances. Birmingham J. noted:

> "[The tenant] has no entitlement to remain in occupation and is a trespasser. On that basis the plaintiff is entitled to the order…without the necessity of considering the Campus Oil Principles." [para.19]

33. Similarly, the respondents cite *Albion Properties Ltd v. Moonblast* Ltd [2011] IEHC 107, where interlocutory relief was sought against a tenant who had not paid rent in some time, but nonetheless remained in possession of the property. In this scenario, the High Court found that the tenant had defaulted by not fulfilling their obligations under the lease. As such, Hogan J. held that the plaintiff was bound to succeed at trial and that the "continuous material breaches of the tenant's obligations" (para. 31) demanded an injunction ordering the defendant to vacate the property.

34. Mr. Hughes submits that the aforementioned authorities indicate that the respondents have a strong case that warrants this exceptional interlocutory relief. As Mr. Collins was only entitled to a tenancy of limited duration, the respondents have a right to terminate that tenancy in line with the Act. The respondents contend that the greater injustice lies in allowing the Collins family to remain in the property where they have exceeded their tenancy by three years without maintaining their rental payments.

35. The respondents take issue with the comparisons made between the current proceedings and Dublin Corporation v. Burke. They highlight that the Supreme Court's decision was predicated on the existence of a "perfectly stateable and arguable" claim to tenancy. This cannot be said to exist where the tenancy was validly terminated by way of notice.

36. Mr. Hughes suggests that damages would not be an adequate remedy in the circumstances where Mr. Collins has had three years wrongful enjoyment of the property without paying rent. The respondents also submit that Clarke J's comments as to the property rights and damages are equally applicable to their arguments.

37. Mr. Hughes submits that the balance of convenience lies squarely with the respondents. The limited nature of Mr. Collins's possession always left open the possibility to terminate the tenancy in accordance with the Act. The landlord, through the receiver, did so and there is evidence that this notice of termination was duly served. Furthermore, the respondents cite Dowdall v. O'Connor [2013] IEHC 423, in which the High Court held that the balance of convenience will generally lie with a receiver who wishes to sell the property as is the case here [paras.31-32]. The respondents also rely on the fact that Mr. Collins has indicated in the past his willingness to vacate in exchange for a payment of €50,000. Moreover, while Mr. Collins alleges damages in his own right, they can be adequately addressed via the 2012 proceedings.

Discussion

38. The first issue is whether the High Court was wrong to find that the notice of termination was valid and was served on Mr. Collins in accordance with s. 6 of the Act. The High Court was satisfied on a prima facie basis that these requirements were satisfactorily achieved. According to two affidavits of service, the notice was served by registered post; by ordinary post; by leaving it at the letterbox of the property and by email sent to the address which Mr. Collins used previously to communicate with Mr. Hughes. Mr. Collins denied receipt. The registered letter was returned undelivered, but not the one sent by ordinary post. Mr. Collins maintained that he had ceased using that email address. The court held that Mr. Hughes had complied with s. 6 of the Act as to service and receipt of the notice. Section 6 provides for service to be effected in one of a number of ways, which include leaving the notice at the address at which the person ordinarily resides and by sending it by post in a prepaid letter to that address. In this case, these two modes of service were employed. In addition, service was attempted by registered post and there was the email. In regard to validity of the notice, the High Court held that s. 12 of the Act was also complied with, particularly in light of Mr. Hughes's letter to Mr. Collins dated 11th May 2012, in which he stated "my role as receiver is to realise the Bank's security and I act as agent of the borrowers . . ." In my judgment, these findings for the purpose of the injunction application are unassailable.

39. The next ground is that Mr. Collins referred the dispute concerning the notice of termination to the Board on 17th June 2015. Binchy J. records in his judgment that this referral only came to light during the hearing of the application and refers to an averment by Mr. Collins in an affidavit before the court to the effect that he had no reason to accept or act upon the notice of termination because it was invalid. The trial judge inferred, from references to this point and to the action that Mr. Collins had taken in the High Court against Mr. and Ms. Moore, the second and third plaintiffs in these proceedings that this meant Mr. Collins was in possession of the notice when he lodged his first dispute with the Board in January 2014. That was out of time, as provided by the Act. Obviously, the June 2015 reference was also out of time. Although it is not relevant to this question, the notice of appeal asserts that the PRTB indicated that it would hear this complaint, but clearly it would not do so if it became aware of the judgment of the High Court. The respondents' notice filed on behalf of Mr. Hughes declares that "the Board has formed the view that it has no jurisdiction to determine the dispute referred to it by the Appellant on 17th June 2015". It is clear in the circumstances that the High Court has held that this dispute is not been referred to the Board and could not validly have been referred because of the cited provisions of the Act of 2004. The court noted that in certain circumstances, there could be an extension of time, but that did not arise. Section 86 (1)(c) does not, accordingly, arise for consideration.

40. In view of the failure of the challenge to the contents of the notice of termination and the mode of service, it is clear that s. 58(1) cannot arise. That section prohibits the termination of the tenancy of a dwelling otherwise than by a process or procedure provided by Part 5 of the Act. The findings of the High Court were that there was compliance.

41. On the matter of pursuit of an alternative remedy pursuant to s. 91(1), Mr. Collins challenges the decision. The respondents' notice refers to High Court proceedings bearing [2012 No. 12700 P] in which Mr. Collins sued in respect of his alleged entitlement to remain in occupation of the property. The judgment of Binchy J. cites the motion that Mr. Collins issued returnable before the court on 8th December 2015 to join Mr. Hughes as an additional defendant to the proceedings already issued by him against the Moores.

42. The ground of appeal number 6 is not easy to understand. Cross J. made an order in the High Court on 3rd April 2014 on the application of Mr. Collins, but that order was subsequently set aside on 10th June 2015 by Murphy J. on the ground that it was irregularly obtained. The judgment says that it is difficult to understand how Mr. Collins can rely on the earlier decision. It is, of course, impossible to do so. It is unnecessary to go into the reasons why Murphy J. set aside the order made by her colleague, but the fact is that the earlier order is of no effect now. Mr. Collins's advisers are misguided in raising this ground.

43. This is an application by the receiver to recover possession of the property with a view to sale and thereby to reduce the indebtedness of the mortgagors to the bank. He is clearly entitled to do that, and the claim that his legal proceedings, and prior to that, the notice of termination, constitute objectionable behaviour that in some way disqualifies Mr. Hughes from bringing these proceedings is also misguided. Obviously, Mr. Collins is entitled to pursue any claim that he has against the Moores or indeed Mr. Hughes. But in respect of this application for an injunction, it is based on the notice of termination served on behalf of Mr. Hughes and his entitlement to possession of the property. Indeed, as the trial judge observed, Mr. Hughes offered what might well be considered a more than reasonable and even generous concession to Mr. Collins in open correspondence. The trial judge is clearly correct in saying that a person could not institute proceedings in pursuit of legal rights if it could be asserted in circumstances, such as those of the present case, that to do so represents unconscionable behaviour such that the courts would shut out the claimant from relief.

44. The final point concerns the proofs required for an injunction of this kind. The trial judge held that "it is established, however, that in cases involving a mandatory injunction, an applicant must establish to the court that he has a very strong case and it is likely to succeed at the trial of the action". He treated this application by the receiver as being in the nature of an application for a mandatory injunction. The court held that the necessary requirements were met and I find it impossible to disagree.

45. Overall, it seems to me that this is a case in which the High Court conducted a careful hearing over two days with the judge reserving his decision before delivering a detailed written judgment in which all the issues were considered. This appeal is a return in this Court to these very disputes on the basis that the trial judge's conclusions were incorrect. I can find no basis on which this Court could hold that the judgment of the High Court was incorrect. I find in general and in particular that I am in agreement with Binchy J.

46. I would, accordingly, dismiss the appeal.