

THE HIGH COURT

CIRCUIT APPEAL

2016 No. 132 C.A.

BETWEEN

PROMONTORIA (FIELD) DAC

PLAINTIFF

AND

BRENDAN MAHON

PATRICIA MAHON

DEFENDANTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 11 April 2019.**INTRODUCTION**

1. This matter comes before the High Court by way of a purported appeal from the Circuit Court. The proceedings were commenced by way of a Civil Bill for Possession issued on 1 November 2013. In brief, the principal relief sought was an order for possession. The title to the relevant lands is registered under the Registration of Title Act 1964. The application for possession was made pursuant to section 62(7) of the Registration of Title Act 1964.
2. An order for possession was made by the County Registrar on 10 October 2014 in circumstances where no Appearance had been entered on behalf of the defendants. The second named defendant, Patricia Mahon, asserts that she had not been served with the proceedings, and did not, in fact, learn of the making of the order for possession until 1 June 2016. On that date, the Sheriff attended at her family home for the purpose of executing the order.
3. Thereafter, the second named defendant set about seeking to set aside the order for possession. Unfortunately, it seems that the second named defendant mistakenly understood that the order for possession had been made by a judge of the Circuit Court (and not by the County Registrar). This mistake resulted in the second defendant pursuing an incorrect procedural route. More specifically, the second named defendant sought to bring an appeal to the High Court rather than to a judge of the Circuit Court.
4. The purported appeal came on for hearing before me on 5 April 2019. Counsel acting on behalf of the plaintiff, Mr Roland Rowan, B.L., raised a jurisdictional objection to the appeal. More specifically, it was submitted that no appeal lies from an order of the County Registrar to the High Court, and the second named defendant should instead have sought to bring an appeal to a judge of the Circuit Court. It was further submitted that the High Court does not have jurisdiction to entertain proceedings which are irregular in form.
5. For the reasons set out in more detail below, I have concluded that this jurisdictional objection is well made. The proceedings are irregular, and the High Court does not have jurisdiction to entertain the purported appeal. In the circumstances, I propose to make an order striking out the Notice of Appeal and setting aside the order of the Master of 15 July 2016.

FACTUAL BACKGROUND

6. The first and second named defendants entered into a loan agreement with Stepstone Mortgages on 4 September 2007. On the same date, the first and second named defendants executed a deed of mortgage with Stepstone Mortgage Funding Ltd. The mortgage was subsequently registered as a charge against the property under Folio 10786L. The date of registration of the charge is 5 December 2007.
7. The loan account fell into arrears. The plaintiff instituted proceedings before the Circuit Court by way of Civil Bill for Possession. The Civil Bill issued in November 2013. The principal relief sought is stated as follows.

"An Order for Possession of the said lands and premises more particularly described in the Schedule hereto pursuant to Section 62 (7) of the Registration of Title Act 1964, which said lands and premises were mortgaged or charged by the Defendants to the Plaintiff pursuant to an Indenture of Mortgage dated the 4th day of September 2007 which was duly registered in the Land Registry on 5th day of December 2007;"
8. The matter was adjourned from time to time in the County Registrar's list. Ultimately, on 10 October 2014, an order was made.

"The Defendants having been duly served with the Civil Bill for Possession herein and the same coming before the Court this day WHEREUPON and on reading the pleadings and documents filed herein and on hearing what was offered by Counsel for the Plaintiff and there being no appearance by or on behalf of the Defendants.

THE COURT DOTH ORDER that the Plaintiff do recover from the Defendants possession of ALL THAT AND THOSE the property comprised in Folio 10786L County Dublin and more commonly known as 60 Clanmahon Road, Donnycarney, Dublin 5 in the County of Dublin, with no Order as to costs.

AND THE COURT DOTH FURTHER ORDER that execution for possession herein be stayed for 4 months from this date."
9. An execution order for possession was subsequently issued by the Circuit Court on 9 March 2016.
10. The second named defendant avers that the first time she was made aware of the order for possession was in June 2016. See affidavit of Patricia Mahon of 14 June 2016.

"7. I say that I was unaware that proceedings seeking the possession of our family home had been issued and adjudicated on by the Court on the 10th October 2014 until the First Named Defendant made me aware, on or about 1st June 2016 after the Sheriff had arrived at my home that an Execution Order had been issued by the Plaintiff dated 9th March 2016 seeking to take possession of our family home. I beg to refer [to] copies of the said order when produced.

8. My Husband always opened the post in the morning including all letters addressed to me and only left for me any letters he wished me to see and I believe genuinely that he was trying to protect me as I suffer from acute anxiety.

9. I say that I did not appeal the said Order for Possession made on the 10th October 2014 with[in] the requisite ten day period allowed to lodge an appeal as I was unaware that any Order had been made. I say that had I known about the Order and the proceedings, I would have participated in and defended the within proceedings."

11. An application was made to the Master of the High Court on 15 July 2016 seeking an order extending the time for serving and lodging a Notice of Appeal against the Circuit Court order of 10 October 2014. The Master made an order extending time, and a Notice of Appeal to the High Court was subsequently lodged on 21 July 2016.

12. Although not directly relevant to the issue in this judgment, it seems that there had been settlement discussions between the parties during the period 2016 to 2018. It appears that there is now a dispute between the parties as to whether or not a final settlement agreement was reached. This is not something which forms part of the subject-matter of this judgment. If either of the parties wish to contend that a binding agreement had been entered into, then it would be necessary for them to institute proceedings seeking to enforce the alleged settlement agreement.

13. The purported appeal came on for hearing before me on 5 April 2019.

DISCUSSION

14. An application for possession in the Circuit Court is governed by Order 5B. Under the version of Order 5B applicable at the time of the institution of the within proceedings, the power of the County Registrar to make an order for possession was set out as follows.

"7. (1) On the return date of the Civil Bill (or on any adjournment from such date), the County Registrar may, in addition to any other order which the County Registrar has power to make:

[...]

(e) where an appearance has not been entered or an affidavit in accordance with rule 5(2) setting out a defence has not been filed and delivered, make an order for possession in accordance with paragraph (xxxiii) or (xxxiv) of the Second Schedule to the Courts and Courts Officers Act 1995;"

15. (The relevant subparagraphs were added to the Second Schedule of the Courts and Courts Officers Act 1995 by section 22 of the Courts and Courts Officers Act 2002).

16. Section 34 of the Courts and Courts Officers Act 1995 (as amended) provides that all orders of a County Registrar shall be subject to appeal to the Circuit Court.

"34.—(1) Without prejudice to any powers, authorities, duties or functions that may be exercised by or conferred by statute or by rules of court on a County Registrar, a County Registrar may make any of the orders mentioned in the Second Schedule to this Act.

(2) [Subject to Article 10(4) of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, all] orders of a County Registrar shall be subject to appeal to the Circuit Court."

17. An appeal from the Circuit Court does not lie to the High Court by reason of any inherent jurisdiction but exists only by reason of statute. See *Hanley v. Martin* [1961] Ir Jur Rep 34, cited in Delany, *The Courts Act 1924 – 1997* (Round Hall, Dublin, 2nd ed., 1999), at page 132.

18. The High Court's jurisdiction to hear an appeal from the Circuit Court is provided for under Sections 37 and 38 of the Courts of Justice Act 1936. It appears therefrom that the jurisdiction is directed to an appeal from a *judge* of the Circuit Court. (See, in particular, section 38(1)(a)). In circumstances where the statutory right of appeal is confined to an appeal from a judge of the Circuit Court, I do not think that the High Court can enlarge its jurisdiction by purporting to entertain an appeal directly from an order of the County Registrar. Not only would this not sit with the language of the Courts of Justice Act 1936, it would also be inconsistent with the provisions of section 30 of the Courts and Courts Officers Act 1995.

19. Whereas the High Court does have full original jurisdiction, this is subject to regulation by statute. Moreover, the High Court is being asked in this case to exercise an *appellate* jurisdiction, not an original jurisdiction. As noted earlier, any right of appeal to the High Court from the Circuit Court is statutory in nature.

CONCLUSION

20. For the reasons set out above, I have concluded that the High Court does not have jurisdiction to entertain the appeal against the order of the County Registrar made on 10 October 2014. Any appeal should, instead, have been made to a judge of the Circuit Court. (This would also have necessitated an application for an extension of time for the lodging of an appeal in circumstances where it is averred by the second named defendant that she was unaware of the making of the order for possession until June 2016).

21. The proceedings are irregular, and the High Court does not have jurisdiction to entertain the purported appeal. In the circumstances, I propose to make an order striking out the Notice of Appeal and setting aside the order of the Master of 15 July 2016.

22. All of this has brought about the unfortunate result whereby the second named defendant finds herself in a position where she has no extant appeal in respect of an order which she says was made without her knowledge. It is, in principle, open to the second named defendant to seek to bring the matter before a judge of the Circuit Court. It would then be a matter for the Circuit Court to decide whether an extension of time can be granted at this late remove.