

THE HIGH COURT

[2015 No. 385 MCA]

IN THE MATTER OF S. 30 OF THE STATE PROPERTY ACT 1954

AND IN THE MATTER OF S. 32 OF THE VALUATION (AMENDMENT) ACT 2015

AND IN THE MATTER OF FERMOY SHOW LIMITED (DISSOLVED)

AND IN THE MATTER OF AN APPLICATION BY THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

Ex tempore JUDGMENT of Ms. Justice Baker delivered on the 2nd day of December, 2016.

1. This judgment is given in an application pursuant to s. 30 of the State Property Act 1954 in respect of certain premises held under lease by Fermoy Show Limited, more full particulars of which will appear later in this judgment. The application is made by the Minister for Public Expenditure and Reform, the statutory successor in title of the Minister for Finance, in whom the premises has vested pursuant to s. 28 of the State Property Act 1954 following the dissolution of the lessee company, Fermoy Show Limited.

2. The Minister is the owner of the fee simple interest in the premises.

3. Fermoy Show Limited was dissolved on 16th April, 1999 and as a result of the dissolution of the company by virtue of s. 28 no further action is needed for all property of that dissolved company to immediately vest in the Minister. Section 28(2) provides as follows:

"28 (2) Where a body corporate is dissolved, either before, on or after the operative date, the following provisions shall apply and have effect and, in the case of a body corporate dissolved before the operative date, be deemed to have applied and to have had effect as from such dissolution, that is to say:-

(a) all land which was vested in or held in trust for such body corporate immediately before its dissolution (other than land held by such body corporate upon trust for another person) shall, immediately upon such dissolution, become and be the property of the State, subject however to any incumbrances or charges affecting the land immediately before such dissolution,

(b) all personal property (excluding chattels real but including choses-in-action) which is vested in or held in trust for such body corporate immediately before its dissolution (other than personal property held by such body corporate upon trust for another person) shall, immediately upon such dissolution become and be State property.

4. The statutory vesting of the premises in the State authorities has occurred by operation of law, and though I note rent continued to be paid for a short period of five years following the dissolution of the company, no party has attended to explain to me the purpose of the payment of that rent and in any event it seems to me that no right can have accrued as a result thereof.

5. The application comes before me by way of an application under s. 30 of the Act which provides as follows:

"30. (1) Whenever the Minister claims that any property (including land) has devolved upon the State by way of escheat or has become the property of the State as bona vacantia or by virtue of section 28, the Minister may, if he so thinks fit, apply to the High Court for an order declaring (as the case may require) that such property has so devolved upon the State or that such property has so become the property of the State.

(2) Every application to the High Court under subsection (1) of this section shall in the first instance be made ex parte and the High Court shall thereupon give such directions as it thinks proper in regard to service or publication of notice of such application and shall not finally determine such application unless or until the directions so given have been complied with and such time as the Court shall consider reasonable in the circumstances has elapsed since such compliance.

3) An order made by the High Court on an application under this section declaring that any particular property has devolved upon the State by way of escheat or has become the property of the State by way of bona vacantia or by virtue of section 28 shall (subject to appeal to the Supreme Court) be conclusive evidence binding on all persons whatsoever (whether they had or had not notice of such application) that the said property has so devolved upon or so become the property of the State in accordance with such declaration."

6. From the experience of the counsel who appeared before me, it seems the section is in fact very rarely used.

7. In giving my ruling on this application, and in the light of the dearth of authority on the operation of the section, I consider that it would be prudent for me to consider the purpose of the application under s. 30, and having regard to the submissions by counsel for all parties who appeared before me, I turn now to examine the purposes for which s. 30 was enacted.

8. First, as a matter of public policy, and a matter of land law, it is proper that there be no legal uncertainty with regard to title. That is a factor which must have influenced the Oireachtas in passing s. 30 because it permits the making by a court of declaration as to title.

9. Second, the application seems to have the purpose of protecting the interests of the dissolved company. There are a number of reasons why this would be so. . Having regard to the constitutional protection of the right of property, it has to be the case that a company would be given an opportunity, once it was notified that the Minister considered that the property had vested, to seek to restore itself to the Register of Companies, and it would seem proper in the light of the constitutional provisions that the company be given that opportunity, or at least that the court would be satisfied that the company has not sought to restore itself to the Register and to restore its rights.

10. The third reason why I consider the Oireachtas passed s. 30 is because of the general rule that the only property that vests in the Minister pursuant to s. 28 is property in respect of which a company has the beneficial interest. See the decision of *Re Kavanagh & Cantwell* (Unreported, High Court, Costello J., 23rd November, 1984) mentioned in Courtney, *The Law of Companies* 3rd ed., at paras. 26.020 and 26.064. (pp. 1686 and 1707). Because only property in which a dissolved company has a beneficial interest will

vest under the Act, it is important that there be clarity with regard to the question of whether the property was held by the company on any trust.

11. That brings me to another reason for this legislative provision. Insofar as property is deemed to vest in the State under s. 28, it might still be vulnerable to some application to restore the company, or to an argument that the company was not the beneficial owner of property claimed to have vested by operation of law. Accordingly, the title would be subject to some vulnerability and could in principle be one that would not be acceptable to a purchaser and would require in particular the insertion of special conditions to deal with that vulnerability.

12. Another reason why I consider that the section was enacted is that, because the vesting of certain leasehold titles is permitted by the Act, and because vesting might have the effect of accelerating certain sub-leasehold interests, it is important that the Minister taking the title under s. 28 is able to identify the interests which have been so accelerated, and also important that any person who claims to hold under a sub-leasehold interest would be permitted as a matter of law to make representations to the court or to the Minister, as the case may be, as to the quality or nature of the title that vested.

13. That last proposition and indeed the proposition with regard to the protective purpose of the section as to the interest of the company is borne out by the fact that the procedure provided under the legislation for the bringing of an application provides in the first place for an *ex parte* application to the court for directions and then, following those directions which are usually directions with regard to service on certain identified persons, the court will not make the order unless it is satisfied that such directions have been met, including directions as to service and publication. Therefore I consider that the legislation envisages that the application requires transparency in the public good and in the interests of the private rights of individuals that might be affected.

14. I am satisfied in this case that an order *ex parte* was made by Moriarty J. following an *ex parte* application on 25th January, 2016 as a result of which certain directions and advertisements were mandated to be effected. I am satisfied that those proofs have been met. I have seen the advertisement and I have seen the notice of the making of the application, and I am satisfied regarding service on the relevant persons identified by Moriarty J. in his order.

15. The proofs for the bringing of the application, it seems to me, are the following:

16. First, the applicant State body must show the nature of the interest that it took. It must, in other words show that the dissolved company was the owner of the land in respect of which it has claimed title has vested. I am satisfied that at the date of its dissolution, the company, which is Fermoy Show Limited, now dissolved, was the holder of the lessee's interests created by a lease made on 15th November, 1960 for the term of 99 years from 1st July, 1950 and subject as therein.

17. The second proof required to be established is that the company was dissolved and from the printout from the CRO and I am satisfied that the company was dissolved at the date mentioned above.

18. The third proof in respect of which I need to be satisfied is that, in the case of a leasehold interest, the Minister has not exercised his or her power to disclaim the lease which I am satisfied has not happened.

19. The fourth matter that requires to be considered by the court, and this goes back to the question of the nature of the title, is whether the interest that is taken by virtue of s. 28 is encumbered or burdened in any way. It is the case under the Act that any interest which devolves on the Minister by virtue of the dissolution of a company can be deemed to be only that interest held by that dissolved company, such that the Minister takes subject to any encumbrance or burden on the title. The Act is clear that under s. 28 the title is taken subject to any encumbrance or charges affecting land immediately before such dissolution. I have seen the searches that have been exhibited, and I am satisfied with regard to the title in the following respect.

20. The title of the company at the date of dissolution was a leasehold title. A small portion of the title of the Fermoy Show Limited was assigned to the ESB by an assignment of 24th November, 1995. The interest thereby assigned did not vest in the Fermoy Show at the date of dissolution so any order that I make would exclude from the declaration the land so assigned. I am also satisfied that at the date of the dissolution the land the subject matter of the lease was burdened with a number of sub-leases which appear from searches, and I am satisfied that those sub-leasehold interests continue to affect the land insofar as they are extant. I am satisfied that there was no surrender or forfeiture of any of those sub-leases from the paperwork being presented to me.

21. Two parties appeared in response to the notices. The first party was the holder of the lessee's interest in a sub-lease created by Fermoy Show Limited on 1st February, 1981 to three persons identified as the trustees of the Fermoy Rugby Club. The term of that lease was the residue of the term of years reserved by the Fermoy Show lease itself.

22. The other party that appeared was the director of a company P. Dunlea & Sons Limited, which company holds under a sub-lease made on 6th September, 1963 for the term of 86 years on 30th June, 1963. I am satisfied that that company has been dissolved, but an application has been made to restore that company to the register and no argument is made by the applicant that the person who attended to represent that company should not have a right of audience.

23. Certain matters were raised in a replying affidavit by the holders of the Dunlea interest. It may be that P. Dunlea & Sons Limited hold under another lease, not the one I have immediately hereinbefore identified, and there is a suggestion in the affidavit evidence that that company might have the benefit of a letting agreement or other right to occupation. That is a matter that may come to be determined in another forum on another date.

24. Certain matters were raised in a replying affidavit sworn on behalf of the Fermoy Rugby Club, *inter alia* the following questions:

- a. First the question of the extent of the land held by the Fermoy Rugby Club under its lease.
- b. Second, as an argument is made in the affidavits, and there is evidence adduced, that there has been what is arguably a variation of some of the lease terms and conditions.
- c. There is thirdly a suggestion in the affidavit that certain third party rights in the form of easements etc. have been extinguished by agreement or otherwise. It is suggested that there are other third party rights to which the interest of the Minister may be subject.

It is argued that on this application I may make certain orders including an order that certain easements no longer affect the land and, in particular, that I may make an order that certain other easements might benefit the sub-leasehold interest.

25. Another argument which gave rise to some concern on the part of the Rugby Club is that there might now as a result of this application, or indeed as a result of s. 28, arise the situation where it is no longer in a position as a matter of law to avail of certain rights which might exist under the Landlord and Tenant Acts, including the Landlord and Tenant (Ground Rent) Acts and the Acts entitling a person or body to make application for a sporting lease. That argument, while it might show some concern on the part of the Rugby Club that its leasehold title might be less valuable than it thought or hoped it was, could not be one that would prevent me making an order under s. 30.

26. There are a number of reasons for this. First, the head interest was at all material times owned by a State entity and that causes some difficulty with regard to certain claims or rights that might be claimed, in particular under the Ground Rent Acts or the sporting lease legislation. Second, it was always open to a landlord or the holder of a lessor's interest to sell his or her interest to the State and there is no legislation of which I am aware that would prevent that happening. Therefore there is no right in law which prevents a landlord doing something which could directly or indirectly have the effect that a tenant may no longer avail of those landlord and tenant rights. Thus I consider that while this is a genuine concern on the part of the Rugby Club, it is not a concern in respect of which I may have regard when making or considering whether to make a declaration under s. 30.

27. Turning now to s. 30 itself, it seems to me that my jurisdiction is relatively narrow and, provided I am satisfied that the proofs are met, I may not engage in the exercise of determining the extent of the inferior interests or the extent of the encumbrances or charges that affect the interest of the Minister. The Act is clear that what the Minister takes is the interest of the dissolved company, subject to any encumbrances or burdens that it carries. Any application for declaratory relief with regard to the extent of the land, and as to the extent or nature of any rights which burden the interests of the Minister are a matter for another day.

28. I consider in the circumstances that, provided I am satisfied that the proofs are met, and I am so satisfied, that it is appropriate that I should make a declaration under s. 30. I note again, just for clarification, that s. 30 is declaratory. It does not itself create a vesting. The vesting happened long since. I note however that the purpose of the legislation must be to quieten this title and that it is proper that the application be granted in ease of, or in aid of, clarity with regard to the nature of the title held by the Minister.

29. Accordingly, I propose making an order as follows: Pursuant to s. 30 of the State Property Act, 1954, that the property comprised in a lease of 18th November, 1960 made between the Minister for Finance of the one part, and Fermoy Show Limited of the other part, devolved onto the Minister with effect from the dissolution of Fermoy Show Limited on 16th April, 1999, pursuant to s. 28 of the State Property Act 1954, and now vests in the applicant, the Minister for Public Expenditure and Reform, for all the estate, right, title and interests lately held by the Fermoy Show Limited at the date of such dissolution, subject to the sub-leases which will be listed in a schedule, and to all and any leases, encumbrances or charges affecting the said party immediately before such dissolution.

30. The order will contain a schedule setting out the parcels clause in the lease itself. It will not contain a map for reasons explained in the course of the application but it will contain a list of the relevant sub-leases subject to which the Minister's freehold interest will be held.