

THE HIGH COURT

[2018 No. 8025 P.]

BETWEEN

PAUL COYLE

PLAINTIFF

AND

WILLIAM COUGHLAN AND LIZ COUGHLAN

DEFENDANTS

AND

WILLIAM COUGHLAN AND LIZ COUGHLAN

COUNTER CLAIMANTS

AND

PAUL COYLE AND META COYLE

DEFENDANTS TO COUNTER CLAIM

JUDGMENT of Mr. Justice Allen delivered on the 11th day of July, 2019

1. By a letting agreement dated 1st December, 2017 made between William Coughlan and Elizabeth Coughlan, as landlord, and Paul Coyle and Meta Coyle trading as Sugar Sisters, as tenant, Mr. & Mrs. Coughlan agreed to let Mr. & Mrs. Coyle to take the premises known as Units 1 and 2 Acol House, Courthouse Square, Maynooth, Co. Kildare, for a term of three years from 1st November, 2017, subject to a monthly rent of €2,000 payable in advance and the terms and conditions therein contained.

2. The demised units were two of six units, in two buildings, one adjoining Mr. and Mrs. Coughlan's house and the other developed by Mr. & Mrs. Coughlan on what previously had been the garden attached to their house. One of the buildings fronts onto Courthouse Square. The ground floor is in two units, one let to an electrical shop called Three Pin, and the other to a coffee shop called The Brewery Coffee House. Above those units is a business called the Treatment Room. To the north of the coffee shop is a laneway leading into a small carpark, at the west of which is the second building, Acol House, which comprises two retail units on the ground floor, Units 1 and 2, and a room above which is used as a bridge club.

3. The carpark serves all six units in the commercial development and is also used by Mr. and Mrs. Coughlan, whose house is immediately to the southeast, to park their car.

4. The letting to Mr. & Mrs. Coyle included a licence to park two cars in the carpark. Special Condition 8 of the Letting Agreement provided: -

"8. The tenant shall have permission to use two undesignated car parking spaces from 9am to 6.30pm during normal working days. No liability for any loss or damage caused to any vehicle at any time whatsoever shall be attributable to the landlord and the tenant, its servants, agents and invitees use any such car parking spaces at their own risk. Without prejudice to the foregoing, the landlord may impose regulations, terms and conditions relating to the use of the said car parking space at any time. The tenant accepts and agrees that the Bridge Club players shall have priority concerning the car parking spaces after 6.30pm each and every day during the term."

5. The Sugar Sisters business is retail cake decoration and tuition in cake decorating, and that was the user permitted by the letting agreement. Mr. & Mrs. Coyle's plan was to use one of the units as a shop and the other as a workshop for cake decorating classes and demonstrations.

6. For the first seven months or so, all was well. Mr. & Mrs. Coyle, with the considerable assistance of their daughters Ms. Amy Coyle and Ms. Emily Coyle, fitted out the units and opened for business. In the early months of the demise the Misses Coyle worked long hours, seven days a week. Ms. Amy Coyle described that Mr. Coughlan kept an eye on her in the evenings, which she was grateful for. Mr. & Mrs. Coughlan were invited to the opening of the new business and brought a bottle of champagne. In the spring of 2018, Mr. & Mrs. Coughlan's granddaughter had her birthday party in the studio.

7. The carpark serving the development could reasonably comfortably accommodate ten cars, although if it was full, the cars parked in two of the spaces would be blocked in. Mr. & Mrs. Coughlan allowed the tenants of each of the commercial units to park one car. They used one themselves, and one was assigned to the Bridge Club, which was earmarked for the use of a disabled member. Save for the area immediately beside the entrance to the Bridge Club, the surface of the carpark was not marked but the tenants knew where they were supposed to park.

8. The licence which Mr. & Mrs. Coyle had was limited to 9am to 6.30pm on "normal working days", but this was not observed or enforced. In the early months, as I have said, Ms. Amy Coyle often worked late and there was no objection to her keeping her car in the carpark. Similarly, in the early months, the Misses Coyle ran classes at the weekends and there was no objection to them or their students parking in the carpark.

9. The Bridge Club operated during the daytime as well as in the evenings. In the daytime, when bridge lessons were run, the bridge players, with the exception of the lady with mobility difficulties, were asked to park elsewhere than in the carpark. In the evenings, when games were played from 7.30 pm, the bridge players parked in Mr. & Mrs. Coughlan's car park. Because the bridge players would all be leaving together, they parked their cars very close together, so that the last car in would have to move before those who had arrived earlier could leave. On most weekday mornings Mrs. Coughlan gave lessons in the Bridge Club but on Tuesdays a game was played.

10. This case was fought tooth and claw over four days in the High Court. A half dozen incidents were examined and re-examined in exquisite detail. On both sides, recollections were clouded, to a greater or lesser extent, by the bitterness that had developed. Some

of the incidents had been videoed and the videos were the subject of minute examination and comment.

11. In the chronology of this saga, the first bitter fight was about the date of Mr. and Mrs. Coughlan's granddaughter's birthday. The Coughlan side said that it was in February. The Coyle side were adamant that it was in April. Ms. Emily Coyle, who had hosted the party, when it was put to her that she was wrong about the date refused to accept that and called up on her mobile phone a photograph, dated 15th April, 2018 of a blond child blowing out her candles. The phone was shown to the court and to counsel and eventually (by-passing Mr. and Mrs. Coughlan) to the child's father: who inevitably confirmed that the child in the photograph was not his. Of course the date of Miss Coughlan's birthday was *nihil ad rem* but the exchange was evidence of the dogged pursuit by Ms. Coyle of an argument which she was bound to lose.

12. The premise of the plaintiff's case was that all had been well for the first seven months of the letting but that the relationship had thereafter deteriorated by reason of the unreasonable conduct of the defendants. But in evidence a number of encounters in March or April were recalled and reimagined. As with the date of Miss Coughlan's birthday, the evidence on these issues goes to the reliability of the witnesses more than the substance.

13. There were a couple of minor glitches in March or April. Understandably, the passage of time meant that the witnesses' recollections of the dates was uncertain, but the dates can be tied down by reference to a note given by Mr. Coughlan to Mr. Coyle dated 23rd April, 2018.

14. The Misses Coyle sometimes stayed late, after the shop had shut. One evening in March or April Ms. Amy Coyle was working in the shop with her boyfriend, David. She described how a foreign couple, who were not Sugar Sisters customers, had arrived at the door of the shop to say that they had been parked in. Ms. Coyle thought that it was about 6.30 pm. Mrs. Coughlan was adamant that it was 7.45 pm, after the game had started at 7.30 pm. Ms. Amy asked David to go upstairs to ask that the owners of whichever of the bridge players' cars as were blocking in the foreign couple's car, to move to let them out. Ms. Coyle described that Mrs. Coughlan was out of control. Mrs. Coughlan, it was said, was never warm and exuded negative energy. Mrs. Coughlan's account of the event was that she said that if people parked after 6.30pm they would get parked in. I think that this incident did happen after the bridge game had begun. The rule was that all cars, other than bridge cars, had to be out by 6.30 pm. Ms. Amy did not know it, but the request to move the bridge players' cars disrupted the game. Because it was David who had come up, Mrs. Coughlan probably thought that the blocked in car was a Sugar Sisters customer's car. I think that Ms. Amy was overstating the position when she said that Mrs. Coughlan was out of control but I am satisfied that she was annoyed, and made her annoyance known.

15. Following that incident Mr. Coughlan spoke to Ms. Amy to explain why cars other than the bridge players' cars had to be out by 6.30 pm.

16. The other glitches involved overnight parking. Overnight parking was not allowed. One day in the late spring or early summer Ms. Frances Coby, Mr. and Mrs. Coyle's sales assistant, lost her car key and left her car in the car park, she thought, overnight, Mrs. Coughlan thought over the weekend. When she eventually arrived to recover her car she was challenged by Mr. and Mrs. Coyle as to why the car had been left and why she had not notified them that it would be left there. She felt scolded. Mr. Coyle, in his examination of Ms. Coby, and in his cross examination of Mr. Coughlan and of Mrs. Coughlan, went into excruciating detail in the hope of establishing that Mr. Coughlan should have known, or should, by reviewing the CCTV footage of the carpark over the previous days or weeks, have established, that it was Ms. Coby's car but it is clear from the evidence that it was not that big a deal at the time.

17. The second overnight parking incident involved Ms. Amy Coyle. Ms. Amy arrived in her car one evening on the way to dinner with the intention of parking overnight. She was approached by Mrs. Coughlan who said that she was not allowed to park overnight. Ms. Amy described Mrs. Coughlan pacing in circles, in a flap, and hysterically pointing at other cars. I am satisfied that Mrs. Coughlan told Ms. Coyle that she was not allowed to park overnight. I am satisfied that Mrs. Coughlan was annoyed but, again, I am satisfied that Ms. Coyle greatly exaggerated what happened.

18. As I have said, I think that these incidents, such as they were, can be anchored by reference to a note given to Mr. Coyle on 23rd April, 2018. This note (a copy of which was not kept by Mr. And Mrs. Coughlan, but the original of which was produced by Mr. Coyle) reminded Mr. Coyle that cars needed to be out of the carpark by 6.30 pm; reminded Mr. Coyle that the lease limited him to two spaces; advised Mr. Coyle that it was unacceptable that Ms. Amy or Ms. Emily should come up to the Bridge Club to ask that cars be moved; and reminded, or informed, Mr. Coyle that some of the bridge players had mobility issues. The note pointed out that parking at weekends was not a problem up to 6.30 pm and warned that there was "*absolutely NO overnight parking without first texting or phoning [the number given].*"

19. While on the one hand leading evidence which it was hoped would show a breach of the covenant for quiet enjoyment, on the other hand Mr. Coyle said that he had absolutely no problem with the position taken by Mr. and Mrs. Coughlan in relation to evening and overnight parking.

20. I am satisfied that in the period up to the end of April Mr. and Mrs. Coughlan politely engaged with Mr. Coyle to ensure (or I should probably say, in the hope of ensuring) that parking was kept more or less to the agreed times: strictly to 6.30 pm on weekdays, with an indication of flexibility at the weekends. Mr. Coughlan is a mild mannered man, who was described by Ms. Emily as pleasant and always obliging and by Ms. Amy as a grandad figure. Mrs. Coughlan is more forthright but she is not the harridan portrayed by the Misses Coyle. The Misses Coyle are young, ambitious, determined and opinionated young women who resented, and in their evidence exaggerated, Mrs. Coughlan's attempts to regularise the use of the car park. I am satisfied that Mrs. Coughlan was perfectly entitled to intervene in relation to evening and overnight parking and that her interventions were perfectly proper and reasonable.

21. The trouble started in June 2018.

22. The Misses Coyle, besides the weekend parties and demonstrations which were going very well for them, devised a diploma in cake decorating which would be earned over five weeks by attending all-day classes on successive Tuesdays. The course was advertised on the basis there was "*parking at the door*". Ms. Emily explained that Sugar Sisters had a competitor about 15 minutes' drive away, where parking was readily available, and that the availability of parking at the Sugar Sisters premises was a selling point. Those classes attracted eight or ten or up to a dozen customers. The carpark simply could not accommodate the traffic. Mr. Coyle parked his customers' cars tightly together, but this inevitably displaced the other tenants and their customers, who, in the case of the other tenants being entitled to use the car park, and in the case of their customers, being in the habit of doing so, variously were unable to get in or, having got in, found no space available. This led to cars being left in the circulation area while the drivers did whatever business they had to do, which inevitably inconvenienced those who had completed whatever business they had to do and wished to leave.

23. For good measure, Tuesday was a day on which bridge was played, by players in the habit of parking, rather than taught to aspirants who had been instructed to park elsewhere.

24. On 6th July, 2018 Mr. Coughlan sent Mr. Coyle a note. The car parking, Mr. Coughlan said, was just chaos, to say the least. That was the fact and Mr. Coyle accepted it. Mr. Coughlan said that he would be putting down car parking lines, hopefully that week. He again reminded Mr. Coyle that Sugar Sisters had two car parking spaces available and asked Mr. Coyle to advise his customers that there was no all-day parking available.

25. Mr. Coyle replied by email on the same day. He said that he was in agreement with parking lines and no parking areas but suggested that this was a significant lease change and wished to be consulted about the details before he agreed. Mr. Coyle expressed concern that the changes proposed would make the Sugar Sisters business more difficult to run and that he and Mrs. Coyle had agreed to rent the unit on the basis that there was customer car parking available. In the same email Mr. Coyle complained about the manner in which some of his customers had been spoken to and asked that any further issues with Sugar Sisters' customers should be brought to the attention of him or Mrs. Coyle or their staff.

26. On the evening of 8th July, 2018 Mr. Coughlan met with Mr. and Mrs. Coyle at the premises. The meeting lasted four hours but it was common case that it got nowhere. Mr. Coyle was unshakeable in his view that nothing could be done without his agreement. He suggested that an engineer should be engaged to advise on the layout of the carpark and that the other tenants, who he called the stakeholders, should be consulted. Mrs. Coyle said that she was shocked at Mr. Coughlan's attitude. She and her husband had, she said – and they had – built up an expectation on the part of their customers that parking would be available. As far as Mr. Coughlan was concerned, there was a serious problem with parking, it was his carpark, and he had a responsibility to his other tenants and their customers. Towards the end of the meeting Mr. Coyle suggested that if agreement could not be reached the matter would end up in court which, he said, would cost him €150 but Mr. Coughlan €50,000. The meeting went on so long that Mr. Coughlan was late for his dinner and Mrs. Coughlan came over. Mrs. Coughlan's contribution to the meeting was that the only thing that was important was the lease, to which Mr. Coyle's response was that he would not obey the lines anyway.

27. In the course of the trial there was a good deal of talk about cars belonging to other tenants and their customers being parked where they ought not to have been, and complaint that nothing was said or done to them. As to that, I say two things. Firstly, even if other tenants or their customers were abusing the carpark, that would not have justified Mr. and Mrs. Coyle in doing so. Secondly, no one other than Sugar Sisters were inviting their customers to park all day. Mr. and Mrs. Coyle appeared unable to recognise that the cause of the congestion and blockages in the carpark was that their numerous long-term customers were displacing everyone else.

28. Mr. and Mrs. Coughlan employed a carpark management company which first of all erected signs on the walls warning that unauthorised cars would be clamped and then issued parking permits to the tenants and erected signs. Mr. Coyle objected to the signs on the ground that fewer of his customers came into the carpark.

29. At the end of August or early September the lines were painted and a moveable bollard was erected on the space earmarked for the disabled bridge player. Mr. Coyle thought that this happened on 20th August. Mr. Coughlan said that it was the first week of September. Nothing turns on precisely when it was that the lines were drawn. Ms. Emily Coyle recalled that the painting took under an hour. Mr. Coyle took the view that the lines disrupted his customers and that the placing of the bollard took up a valuable space.

30. I am satisfied that the painting of the lines caused some disruption in the use of the car park for a short time. That was inevitable but the painting of the lines was perfectly reasonable and it was done in the exercise by Mr. and Mrs. Coughlan of the right they had reserved, or had spelled out, in the lease, to manage the use of the carpark.

31. I am satisfied that the lines, when painted, disrupted Mr. and Mrs. Coyle's customers in parking whenever, and wherever, and for so long as they liked. That was the whole point of the lines and the signs. The bollard did not take up a space which was valuable to Mr. Coyle but ensured that a space which was assigned to and valuable to any disabled member of the Bridge Club would be available for that member when required. The bollard, no less than the lines, was lawfully placed in the exercise by Mr. and Mrs. Coughlan of their rights.

32. A quite inordinate time was spent viewing and discussing the video tapes of three incidents, not only what was happening and what the videos showed, and did not show, but the make, model and ownership of the vehicles. These incidents were said to show the wrongful conduct of the defendants.

33. The first was taken on 28th July, 2018. The video does not show, but the witnesses described, that Mrs. Coughlan, on driving into the carpark, found her way blocked by a red jeep. She is said to have beeped her horn and flashed her lights, which drew Mr. Coyle to the door of his premises and Mr. Coughlan out into the car park in his wet gear. The video does not show, but Mr. Coyle described, that when Mrs. Coughlan flashed her lights or sounded her horn, he asked one of his customers to move a black car. The black car, before it was moved, had not been causing an obstruction but it was moved to a place where it prevented Mrs. Coughlan from reversing into her space. Mrs. Coughlan wanted the black car moved. Mr. Coyle took the view that it had been moved once and he blocked Mrs. Coughlan from entering the shop to ask the owner of the car to move it. The situation was eventually diffused by Mr. Coughlan encouraging Mrs. Coughlan to drive, rather than reverse, into the space. This unedifying spectacle was said to be evidence of intimidation by Mr. and Mrs. Coughlan. It was not. It showed boorish behaviour on the part of Mr. Coyle.

34. The second video was of an incident on 4th September, 2018. A Sugar Sisters customer who wished to park in the carpark – elsewhere than in a Sugar Sisters space – was turned away by Mrs. Coughlan. Before the video started, Mrs. Coughlan attempted to get the attention of those within the demonstration area by knocking on the window. A fair amount of time was spent debating whether Mrs. Coughlan tapped, or rapped, or knocked, or banged on the window. Ms. Emily Coyle was indignant that Mrs. Coughlan had the temerity to make any approach to her because, she said, Mrs. Coughlan had been told by Mr. Coyle not to talk to the staff. By the time of the incident, Miss Emily's demonstration had been going on for an hour and a half. As far as Ms. Emily was concerned, if Mrs. Coughlan had something to say she should contact her father: and she said so. As far as Ms. Coyle was concerned, the disturbance of her icing demonstration during the day to have cars which ought not to have been there moved, was no different to David disturbing the bridge game in the evening to have cars which were entitled to be there moved to facilitate the departure of cars which ought not to have been there.

35. To the extent that it is necessary for the High Court to decide the issue as to the strength or volume of the knock on the window, I find that it was neither a tap nor a bang, but a good, sharp and probably testy rap.

36. The video records Ms. Emily Coyle advising her customer as to the availability of parking locally and Mrs. Coughlan saying "You

have two spaces and no more.” In Ms. Coyle’s view, Mrs. Coughlan was brusque and was harassing her customer. In my view Mrs. Coughlan was firm and clear. The Coyles had set their faces against abiding the parking rules and if Mrs. Coughlan was brusque, she was entitled to be. There is no evidence in this clip of harassment.

37. On Mr. Coyle’s view of the world, any breach by Mr. and Mrs. Coughlan of his edict on 6th July that they should not approach his staff or customers was a breach of their covenant for quiet enjoyment. I reject that argument. Mr. and Mrs. Coughlan were perfectly within their rights to complain about irregular parking.

38. The third incident was the most serious. The video did not show, but Mr. Coughlan described, and was not contradicted, that on 8th September, 2018 Mr. Coughlan saw Mr. Coyle direct one of his customers to park in a space which was not a Sugar Sisters space, at a time when one of the Sugar Sisters spaces was free. Mr. Coughlan went to the door of the shop and asked Ms. Emily to get her father. Mr. Coyle came to the door, caught Mr. Coughlan by both elbows, and pushed him backwards down the wheelchair ramp. Undaunted, Mr. Coughlan returned, he said, to deliver his message, or as Mr. Coyle saw it, to enforce his will in relation to parking. One of the Misses Coyle videoed what happened next. The video shows Mr. Coughlan coming to the door of the shop and shows Mr. Coyle pushing him forcibly out the door. Mr. Coughlan is seen to stagger slightly. Then Mr. Coyle follows Mr. Coughlan into the car park, filming. Mr. Coyle, who plainly followed Mr. Coughlan, is heard to ask Mr. Coughlan to stop following him. Mr. Coughlan is heard to say that Mr. Coyle pushed him out (which he had) and Mr. Coyle is heard to say that he has the right to use whatever force he required. At some stage Mr. Coyle called the Gardaí. There was not much, if any, difference between the account given by each of Mr. Coughlan and Mr. Coyle.

39. Mr. Coughlan was 76 years of age. He is fit and well. He is trim and of average build. Mr. Coyle did not say what age he is but he is in his early fifties. He is a very tall, lean, and strong man. The proposition that he or anyone else might have been intimidated by Mr. Coughlan or by Mrs. Coughlan who is a little younger than her husband was risible and Mr. Coyle moved from his suggestion that he had been intimidated to saying that he had been frustrated. I am satisfied that Mr. Coyle was annoyed at being asked to obey the rules and to confine his use of the carpark to that permitted by the lease: and that he made no attempt to hide his annoyance.

40. Mrs. Coyle gave evidence that she was very shocked by what she saw on 8th September. Ms. Emily Coyle gave evidence that she was in complete shock and visibly shaking and that the atmosphere in the shop changed. I am sure that she was, and that it did. It had nothing whatsoever to do with anything that Mr. Coughlan did.

41. In cross-examination it was put to Mr. Coyle that the Gardaí had decided to prosecute him, but not Mr. Coughlan, for assault. Whatever view the Gardaí may have taken of the video, or the reports made to them, was irrelevant to my decision as to what happened but the pending criminal prosecution means that I have to be circumspect in what I say. I will content myself by saying that Mr. Coughlan was perfectly within his rights to go to the door of the shop to remonstrate with Mr. Coyle and that there is no evidence whatsoever of Mr. Coughlan intimidating Mr. Coyle.

42. On 10th September, 2018 Mr. Coyle applied ex parte to the High Court for injunctions restraining Mr. & Mrs. Coughlan from entering the demised premises and from interfering, watching, besetting, threatening, or otherwise approaching him or Mrs. Coughlan, or their staff, servants, customers or agents of Sugar Sisters. Mr. Coyle was given leave to effect short service of a motion but did not issue his summons until 7th November, 2018.

43. By letter dated 19th September, 2018 Mr. & Mrs. Coughlan’s solicitors called upon Mr. Coyle to provide, by the following Friday, evidence of the discharge of all outgoing on the premises; evidence of insurance as required by Special Condition 3 of the lease; evidence of the discharge of commercial rates; and evidence of the discharge of the management fee which, by Special Condition 2, was payable to Mr. & Mrs. Coyle.

44. In his reply of 21st September, 2018 Mr. Coyle protested that the time allowed was insufficient and expressed concern as to the rationale for the request and suspicion that Mr. and Mrs. Coughlan hoped to gain the justification for evicting him. Mr. Coyle was perfectly right. I am quite satisfied that Mr. and Mrs. Coughlan had had enough of Mr. Coyle and, although the rent was at that time paid up to date, had come to the view that he was more trouble than he was worth. Mr. and Mrs. Coughlan’s motivation, however, is irrelevant in law.

45. On 6th November, 2018 Mr. and Mrs. Coughlan gave notice pursuant to s. 14 of the Conveyancing Act, 1881 complaining of breach of covenant on the part of Mr. and Mrs. Coyle in failing to pay the rates, failing to maintain insurance as required, and causing a nuisance and obstruction by parking; and threatening forfeiture unless the breaches were remedied in seven days. By delivery of their counterclaim on 4th December, 2018 (to which Mrs. Coyle was joined) Mr. and Mrs. Coughlan formally re-entered and forfeited the lease.

46. There was some discussion in the course of the hearing as to whether the fact that Mr. and Mrs. Coyle had an arrangement with Kildare County Council to pay arrears of rates by way of instalments meant that the rates were paid up to date, and whether a policy of insurance which was obviously voidable for breach of warranty was sufficient compliance with the covenant to insure, but in the event those issues evaporated.

47. About a week before the trial started, Mr. Coyle returned the keys to the property. At the trial Mr. and Mrs. Coyle agreed that the forfeiture had been effective and said that they were not making any claim for relief against forfeiture. They declared themselves willing to renegotiate the lease or to take a lease on terms that would allow them and their customers to park as many cars as they liked for as long as they liked, but did not wish the lease which they had to be reinstated.

48. It was common case that the rent was paid up to the end of November, 2018 and that nothing had been paid since. It was not contested that the value of the use and occupation was the same as the rent which had been agreed. Besides the rent, Mr. and Mrs. Coyle had the benefit of services for which they agreed to pay €2,000 per annum by monthly instalments. I measure the value of the use and occupation at €2,166.67 per month.

49. Mr. Coyle’s legal submission was not easy to follow. He pressed his claim for damages under a number of headings. The substance of his claim was that Mr. and Mrs. Coughlan had breached the covenant for quiet enjoyment by imposing unreasonable restrictions on their use of the carpark and by intimidation. It was argued that by reference to their initial proposal and the conduct of the parties in the first seven months, Mr. and Mrs. Coyle had “*an implied contract that ran alongside an express contract*”. In defence to the counterclaim, he argued that clause 8 of the letting agreement was “*devoid of fairness and proportionality*” and that the forfeiture of the lease meant that the counterclaim was a nullity. He argued that in view of Mr. and Mrs. Coughlan’s conduct there should be no order as to costs.

50. Mr. Coyle's claim is entirely devoid of merit. Mr. and Mrs. Coughlan's tolerance of large numbers of Sugar Sisters customers parking for long periods of time at the weekends did not give rise to a right to continue to do so, still less to a right to do so on weekdays. By encouraging their customers to park all day on weekdays, Mr. and Ms. Coyle introduced chaos, to the great inconvenience of Mr. and Mrs. Coughlan and the other tenants and their customers. Mr. and Mrs. Coughlan were perfectly entitled to insist on compliance with the terms of the letting agreement and to put the regulation of the car park on a more formal footing. Whether the regulation of parking was required for health and safety reasons is irrelevant.

51. It is settled law that neither evidence of antecedent negotiations nor subsequent conduct is admissible in construing a contract. Apart from that, I cannot forbear to observe that it was not suggested that Mr. and Mrs. Coughlan had ever said or given reason to believe that Mr. and Mrs. Coyle would have any more than two spaces available to them or their customers.

52. There will be an order dismissing the action with an order for payment by the plaintiff of the defendants' costs, including all reserved costs, and the costs of discovery.

53. On the counterclaim there will be an order against both defendants to counterclaim for possession of Units 1 and 2 Acol House, Courthouse Square, Maynooth, Co. Kildare; a decree for €15,166.00 for mesne rates; and an order for costs.