

THE HIGH COURT

[2016 No. 13JR]

BETWEEN

ROBERT BRADSHAW

APPLICANT

– AND –

MARY DELAHUNTY, COUNTY REGISTRAR

RESPONDENT

– AND –

J.H. ROCHE & SONS

NOTICE PARTY

JUDGMENT of Mr Justice Max Barrett delivered on 6th December, 2016.

I. Introduction

1. JH Roche & Sons is a company that supplies animal foodstuffs. For a time, it provided foodstuffs to Mr Bradshaw, a farmer. Arising out of that business relationship, JH Roche & Sons issued proceedings against Mr Bradshaw for the recovery of monies. Mr Bradshaw apparently failed to file a defence to the claim and judgment issued against him in the Circuit Court office in Tipperary on 11th March, 2014. Mr Bradshaw then filed a motion to have this decision reviewed. Separately, he also issued proceedings against the solicitors for JH Roche & Sons seeking damages for, *inter alia*, defamation and misrepresentation. Both matters came before O'Connor J., sitting on the South Eastern Circuit. O'Connor J. transferred both matters to the Judges' List in County Tipperary for January, 2016, presumably so that they could both be heard together.

2. It is common case between the parties that Mr Bradshaw attended at the County Registrar's desk in Clonmel on 7th December, 2015, and sought to have both matters transferred to a different jurisdiction. The desk-officer refused to accept Mr Bradshaw's motion and advised him that he would have to attend at the public call-over of the County Registrar's list the following day at Clonmel Court and make his application directly to the County Registrar who was due to preside over the list. At the call-over of the list on 8th December, both matters involving Mr Bradshaw were called and the Registrar listed both matters for the next session in accordance with the order made by O'Connor J. Notably perhaps, Mr Bradshaw was present and applied from the body of the court to have the matters transferred to Dublin for trial here. This application was refused by the County Registrar who explained that she did not have jurisdiction to proceed as Mr Bradshaw wished.

3. Mr Bradshaw subsequently issued judicial review proceedings seeking to have what he contended were two separate orders/decisions made by the County Registrar on 8th December set aside. However, following application for leave, the High Court granted leave in respect of one order only, namely the order refusing to transfer to Dublin the motion to have the office judgment set aside. This order states as follows:

"This matter coming before the Court on this day by Order of the County Registrar dated 9th day of July, 2015.

WHEREUPON AND ON HEARING the Solicitor on behalf of the Plaintiff and the Defendant in person

THE COURT DOTH ORDER

That the matter be listed for hearing at Clonmel Circuit Civil Court on the 12th day of January at 10.30 a.m."

4. It is contended by counsel for the County Registrar that (a) the contents of the above-quoted order and (b) the process pursuant to which it issued, *i.e.* in response to a direct application from Mr Bradshaw in the course of the County Registrar's call-over list, clearly show that the order was made by the County Registrar acting in her quasi-judicial capacity. Whether counsel is correct in this regard appears to the court to be a matter that should be decided, if it requires to be decided, by the judge who hears the judicial review application.

II. The Role of the County Registrar

5. County registrars perform a number of quasi-judicial functions which are conferred upon them by statute. So, for example, they conduct motions courts and case progression hearings, perform arbitrations under the ground rents legislation, and are involved in the taxation of costs. Pursuant to Order 18 of the Circuit Court Rules they are possessed of wide powers. But, notwithstanding the foregoing, some of the tasks done by a County Registrar as County Registrar are exclusively administrative in nature. So, to take a very simple example, if a County Registrar directs a member of her staff to arrange for the printing or purchase of office stationery, that is the discharge by the said County Registrar of an official function, but it is clearly not the exercise of a quasi-judicial function. In the within case, it is contended by counsel for the County Registrar that, not least for the reasons stated hereafter, what the County Registrar did at the call-over on 8th December last was the exercise of a quasi-judicial function and not an administrative function, those reasons being that:

- (i) the order was made in response to a formal application made in the course of a call-over list heard in open court;
- (ii) Mr Bradshaw's transfer request was refused by administrative staff in the County Registrar's office on 7th December on the basis that it had to be made to the County Registrar at the next day's hearing of the call-over list in open court; and
- (iii) Mr Bradshaw's application in open court on 8th December was made and decided in like manner to every other application made at the call-over on 8th December.

6. Again, whether counsel for the County Registrar is correct in his various contentions appears to the court to be a matter that should be decided, if such requires to be decided, by the judge who hears the judicial review application.

III. The Purpose of the Within Application

7. By order of the court perfected on 16th January, 2016, Mr Bradshaw has been granted leave to apply by way of judicial review to have set aside the County Registrar's decision not to transfer to Dublin the motion to have the office judgment set aside. When the County Registrar was placed on notice of this application, her solicitor wrote to Mr Bradshaw's solicitor indicating that she would not be taking part in the proceedings and that no costs order should be sought against her at the conclusion of the judicial review proceedings.

8. At the time leave was granted, Mr Bradshaw had joined a notice party to the proceedings. There seems to be some dispute about the fate of this notice party. Counsel for the County Registrar maintains that Mr Bradshaw: (i) having joined this notice party, subsequently allowed the withdrawal of same from the proceedings; and (ii) allowed this withdrawal in the mistaken belief that, in the performance of her impugned actions, the County Registrar was acting in an administrative (so not a quasi-judicial) fashion and thus that she would be liable for Mr Bradshaw's costs in the event that his judicial review application is successful. By contrast, counsel for Mr Bradshaw indicated that the notice party has not been allowed to withdraw from the proceedings but has simply elected not to participate actively in the proceedings.

9. Where the truth lies as to whether or not the notice party has been allowed to step out of the proceedings is a matter which, it appears to the court, should be decided – if it requires to be decided – by the judge who hears the judicial review application. The reason the within application has been brought is that the County Registrar, with undue haste, wishes this Court *"to re-affirm the position which has been repeatedly established by the Courts"* that absent bad faith (which the court understands is not contended to arise here), a person performing a quasi-judicial or judicial function and whose actions are the subject of a judicial review application that is not contested by the said person, will not be fixed with the costs of the party bringing the judicial review application if such applicant party is successful.

IV. Conclusion

10. As might be gleaned from the foregoing, the court does not consider that the within application is an application that falls rightly to be made at this time. It seems to the court that the more proper moment at which to make such submissions as have been referred to above is after judgment is rendered in the judicial review application, at the point when any submissions as to costs are heard. Indeed, the court cannot but wonder whether in making the within application, the County Registrar may not inadvertently have converted into a partly contested application what was to be, so far as her role was concerned, an entirely uncontested application. The court notes too that the courts are tasked under Art. 34 of the Constitution with the administration of justice, not the giving of legal advice as to how parties are positioned legally at any one time. This last task is properly a matter for solicitors and barristers skilled in the law. The court would also be concerned that were it now to give or refuse the 're-affirmation' sought, it might be perceived to fetter in some way the discretion as to costs that will be enjoyed by the judge who hears the judicial review application. The court therefore respectfully declines to consider, or give any view as to, the 're-affirmation' sought.