

THE HIGH COURT
CIRCUIT COURT APPEAL

[Record No. 2017 230 CA]

[Record No. 2017 236 CA]

BETWEEN**DECLAN GIBBONS (AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VERA HANLEY) (DECEASED)****PLAINTIFF****AND****CHRIS ADDINGTON****DEFENDANT****JUDGMENT of Mr. Justice Robert Eagar delivered on the 1st day of December, 2017**

1. This judgment concerns an appeal against the decision of Judge Linnane dated 18th July, 2017, in which the learned Circuit Court Judge refused the defendant's application to transfer the proceedings to the Family Court and the Court further ordered that the plaintiff as personal representative of the estate of Vera Hanley (deceased), recover from the defendant possession of the lands and premises situated at 47 Mount Prospect Drive, Clontarf, Co Dublin.

2. Judge Linnane ordered that the execution for possession be stayed for 28 days from the 18th July, 2017.

3. On 28th July, 2017, the Master of the High Court extended the time for appealing the order of Judge Linnane for three weeks from the 28th July, 2017.

4. No formal notice of appeal was lodged, and as a result of two applications by the applicant to this Court, one dated 3rd August, 2017, before O'Hanlon J. where the Court ordered that the motion to stay the order of the Circuit Court pending the appeal was refused and before Meenan J. on the 14th August, 2017, where the court held that the order of O'Hanlon J. stand and the application of the defendant for a priority hearing of the appeal was refused. On 4th August 2017, the defendant applied to the Court of Appeal and as a result of the application before the Court of Appeal, an expedited hearing of this matter was arranged for the High Court on the 13th October, 2017, when this Court heard the appeal.

5. Counsel on behalf of the plaintiff outlined the evidence in relation to the application for ejectment proceedings. He referred to the affidavit of Declan Gibbons and said that the plaintiff Declan Gibbons is the personal representative of Vera Hanley (deceased). She lived at 47 Prospect Drive, Clontarf, Dublin 3 and died on the 28th February, 2014, and he is the sole surviving executor named in the deceased's last will and testament dated 25th September, 1981. On 26th of January, 2015, the last will of Vera Hanley was proved and registered in the Probate Office and the administration of the estate which devolves under and vested in the personal representative of the deceased was granted by the court to Declan Gibbons, the nephew of the deceased, and the surviving executor named in the will.

6. The will provided that the deceased devised and bequeathed all her property of every nature and description whatsoever and wheresoever situated and disposed of, in equal shares to her niece Maria Gibbons and her nephew Declan Gibbons subject to the right of her sister-in-law Delia Hanley, to reside in 47 Prospect Drive, Clontarf, Dublin 3, free from all rent or outgoings, and the premises to be maintained by Maria Gibbons and Declan Gibbons. In fact, Delia Hanley predeceased Vera Hanley. Mr. Gibbons says that in his capacity as personal representative of the deceased's estate, he is the person responsible for the premises. He also referred to a memorandum of agreement dated 1st October, 2009, made between the deceased as landlord and Maria Gibbons as tenant. The deceased had demised the premises at 47 Prospect Drive, to her niece Maria Gibbons for a term of one year in consideration of a monthly rent of €1,100. The Court notes at paragraph 3 of the exhibited agreement:-

"(b) That if the tenancy created should continue beyond the dates specified herein, it shall, in the absence of a new agreement, be deemed to be a tenancy determinable by one calendar month's notice in writing by either party expiring on any gale date;

And

(c) that the Circuit Court shall have jurisdiction to entertain any proceedings in respect of this Contract of Tenancy and that any document in any such proceedings and any document requiring to be served on the landlord or on the tenant may be served on the landlord by sending it by prepaid registered post addressed to him at this last known place of residence and be served on the tenant by delivering to or at or by sending it by prepaid registered post to the demised premises. The term was one year fixed, followed by automatic renewal. Lease commenced on 1st October 2009."

7. By letter dated 24th October, 2016, the solicitors on behalf of Declan Gibbons as legal personal representative of the deceased wrote to Maria Gibbons, indicating that that the property is now sale agreed and that his client had agreed to a closing date of 5th December, 2016. In the circumstances she would be required to vacate the property on or before this date. A copy of that letter was sent to the defendant who was the husband of Maria Gibbons. Mr. Gibbons said that he had terminated the said agreement and any tenancy created by notice in writing dated 24th October, 2016, and that Maria Gibbons duly quit the premises on 21st December, 2016.

8. The defendant replied to the notice of the 24th October, 2016, following day, to indicate that he did not consent to the sale of the premises. He subsequently wrote to Mr. Gibbons on the 17th of December, 2016, to irrevocably withdraw his previous letter and to give consent to his wife "to do all things necessary as she sees fit pertaining to the premises". The defendant's wife, Maria Gibbons, had consented to the sale of the premises but on the 19th of December, 2016, and subsequently on the 21st December, 2016, the defendant withdrew his consent to the sale of the premises.

9. Counsel on behalf of the plaintiff referred to the affidavit of Maria Gibbons the wife of the defendant, who was the tenant of the

premises under the agreement. In that affidavit, she said she resided in the premises between 1st October, 2009, and 21st December, 2016, as a tenant of the deceased pursuant to the agreement dated 1st October, 2009. Further, although the tenancy created by that agreement was never formally renewed on 31st September, 2010, or thereafter, she continued to reside in the premises pursuant to its terms. She stated that her brother terminated the tenancy by notice dated 24th October, 2016, and she accepts that her brother is obliged to sell the premises in order to administer their late aunt's estate. She accepted his notice to quit and agreed to yield up possession of the premises which she duly did on 21st December, 2016. Her husband the defendant refused to leave the premises. He did not execute a lease or tenancy in respect of the premises, was not a tenant of her late aunts, or of her brother and never paid any rent or made any contribution towards their household expenses at any stage since 1st October, 2009. Counsel said that it is a source of distress for her that her husband has refused to yield to repossession of the premises. It appears that the marital relationship between Maria Gibbons and the defendant has now in effect ceased.

10. Counsel on behalf of the plaintiff referred to the points which the defendant made in the course of a series of affidavits. He noted that the defendant made criticisms of judges and the superior court rules.

11. He noted the following issues raised by the defendant before Judge Linnane :-

"(1) that this should have been transferred to the Family Court.

(2) That he had agreed with the deceased that he would maintain the property while he lived there.

(3) That he was entitled to reside rent free in the property."

12. The Family Home Protection Act 1976 by s. 10 provided that the jurisdiction conferred on a court by this Act may be exercised by the High Court, but that where the rateable value of the land to which the proceeding relates, exceeds €100 or the value of the personal property to which the property relates exceeds €5,000 and the proceedings are brought in the Circuit Court, that the court shall, if a defendant so requires, transfer the proceedings to the High Court, that any order made or acted on in the course of such proceedings before such transfer shall be valid unless discharged or varied by an order of the High Court. Section 10 of the Family Home Protection Act 1976 was amended by s. 48 of the Civil Liability and Courts Act 2004, which is as follows:-

Section 10 of the Act of 1976 is amended by:-

"(a) the substitution, in subs. (4) (inserted by s. 13 of the Act of 1981), of-

(i) "market value" for "rateable valuation", and

(ii) "€3,000,000" for "£200".

(c) the insertion of the following subsection:

"(8) In this section 'market value' means, in relation to land, the price that would have been obtained in respect of the unencumbered fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land."

13. It seems clear that the Circuit Court had jurisdiction to deal with any issues relating to the Family Home Protection Act 1976 as amended, having regard to the amendment by the substitution in subsection 4 (inserted by s. 13 as a result of the amendment by s. 48 of the Civil Liability and Courts Act 2004).

14. In respect of the second issue Mr. Addington said he had agreed with the deceased that he would maintain the property whilst he lived there. Counsel on behalf of the plaintiff said that this was not a valid claim and averred that it was a money claim but it did not entitle him to stay in the property, he also suggested that such a claim is time barred. He referred to s. 9 of the Civil Liability Act, 1961 which provides: -

"9 (1) In this section "the relevant period" means the period of limitation prescribed by the Statute of Limitations or any other limitation enactment.

(2) No proceedings shall be maintainable in respect of any cause of action whatsoever which has survived against the estate of a deceased person unless either -

(a) proceedings against him in respect of that cause of action were commenced within the relevant period and were pending at the date of his death,

Or,

(b) proceedings are commenced in respect of that cause of action within the relevant period or within the period of two years after his death, whichever period first expires."

15. In these circumstances, this section provides that any claim against the estate of Vera Hanley must have been brought within two years of the date of her death.

16. Mr. Addington in this Court presented the argument that it was a family home, he referred to the Universal Declaration of Human Rights and that the plaintiff had failed to address his legitimate claim.

17. The Court asked the defendant what was his legitimate claim and he said that his wife's aunt Vera Hanley, the deceased, having had a number of falls, had gone into care in June or July, and he was on standby for call out if there was an emergency in the home. He said that she asked him to look after the house for her on a visit, he said when asked by the Court had he seen the contents of the will, he said he had not seen the will until the ejectment papers in the Circuit Court. He suggested that the rental agreement

looked fabricated and insisted that this was a family issue. He also suggested that the rental agreement had been cancelled because his wife, Maria Gibbons and the plaintiff had split the rent between themselves.

18. He argued that there were constitutional issues and the Court indicated that he should have taken High Court proceedings to seek to challenge the constitutionality of the legislation. He also argued that the Courts of Justice were closed to the man on the street. He also suggested the following : -

(1) the solicitor on behalf of the plaintiff was negligent,

(2) the family tried to have him locked up,

(3) the rental agreement was a fabrication,

And,

(4) there was no justification for the transfer of ownership to the executor.

19. In response, counsel on behalf of the plaintiff said that all of the acts enjoyed the presumption of constitutionality and that the defendant had not sought to challenge the constitutionality by taking proceedings against the Attorney General and Ireland. He said that there could be no suggestion that the rental agreement was fabricated and there was no evidence adduced by Mr. Addington to say that that is the case.

20. The Court is satisfied that having regard to the affidavit of Declan Gibbons and the exhibits thereto, and the affidavit of Maria Gibbons, that the administration of the estate was vested in the personal representative of the deceased Declan Gibbons, the nephew of the deceased and surviving executor named in the will, further that the personal representative is the person responsible for the premises and that the court notes that pursuant to a letter dated the 24th October, 2016, from the solicitors on behalf of Declan Gibbons, Maria Gibbons indicated that she would comply and duly quit the premises on the 21st December, 2016.

21. The Court is satisfied that any claim against the estate of Vera Hanley must have been brought within two years of the date of her death and no application has been made by the defendant in this regard, the Court also notes the provisions of Section 9 of the Civil Liability Act 1961.

22. In respect of the arguments which were argued before the Court, the Court is satisfied that the lease of agreement dated the 1st October, 2009 made between the deceased as landlord and Maria Gibbons as tenant for a term of one year and continued in circumstances where the plaintiff duly determined that the tenancy would be ended on the 21st December, 2016, does not give rise to any protection under the Family Home Protection Act. It would be difficult to imagine any landlord leasing property to a married couple if the Family Home Protection Act provisions governed such a lease.

23. The Court notes from the defendants documents and affidavits that the manner in which the defendant has pleaded his claim in these proceedings is to advance allegations which have no basis in fact. The Court believes that the proceedings constitute frivolous and vexatious proceedings. Feeney J. in *John Rooney v. Ireland & The Attorney General* [2012] 2844 P stated that:

"the serious accusations of wrong doing made against members of the High Court, the Supreme Court at paras. 30 to 34 of the statement of claim (in that case) has no statutory basis. These allegations are now made prior to the institution of these proceedings and the judgment said no order has been made to reopen of the decisions. The allegations have been pleaded and I am satisfied that for the purpose of embarrassing or scandalising the parties involved in amount to an abuse of process (this Courts emphasis)."

24. The Circuit Court Judge was correct in her decision and the Court will make an order for the possession of the property to be given to the plaintiff as personal representative of the deceased. The Court noted that Judge Linnane ordered that the execution for possession be stayed for 28 days from the 18th July, 2017, however the defendant has refused to leave the property and has paid no rent in the meantime and in all the circumstances of the case the Court will not give a stay but requires the defendant to vacate the premises by the 3rd December, 2017.