

THE HIGH COURT
CIRCUIT APPEAL

[2015 No. 6 CA]

BETWEEN

BANK OF IRELAND MORTGAGE BANK

PLAINTIFF/RESPONDENT

AND

SHANE HANLEY AND ALAN GIBLIN

DEFENDANTS/APPELLANTS

JUDGMENT of Mr. Justice Noonan delivered the 26th day of November 2015.

Introduction

1. This matter comes before the court by way of appeal by the first named defendant ("Mr. Hanley") against an order of the Circuit Court sitting in County Galway (His Honour Judge McCabe) made on the 18th of December, 2014. That order granted possession to the plaintiff ("the bank") of certain lands and premises in Galway comprising a dwelling house owned by the defendants and the subject of a mortgage in favour of the plaintiff, together with ancillary relief. The dwelling house in question is not the family home of either of the defendants and was rented by them to tenants from time to time. The matter was heard on affidavit and hence the appeal was to the High Court in Dublin.

Relevant background

2. The bank's Civil Bill for Possession contains the usual averment that the rateable valuation of the property does not exceed €253.95. The application before the Circuit Court was grounded upon two affidavits of Fiona Cassidy, a bank official, who set out the relevant history of the matter and exhibited the formal proofs. There were further two verifying affidavits of another bank official, John Hughes, essentially dealing with necessary proofs under the Bankers Book Evidence Acts. The grounding affidavits did not exhibit a certificate of rateable valuation. However, in a further affidavit sworn for the purposes of the appeal, Stephanie Coughlan, a solicitor in Ronan Daly Jermyn, solicitors, who represent the bank, avers:

"I say that the practice at the time of the hearing on the 18th of December, 2014, was to produce, if requested, a letter from the local authority stating that the property was not separately rateable, but if it were, the valuation would not exceed €253.95."

3. She exhibits a letter of the 4th of November, 2013, from the local authority in the following terms:

"RE: PROPERTY AT 84 COUNTRY MEADOWS, CLOONTHUA, TUAM, COUNTY GALWAY

A Chara,

I wish to acknowledge receipt of your letter together with cheque in the amount of €30 in respect of a PLV Certificate for the above property.

I hereby wish to confirm that the above property, is not separately rated, but if it were, the valuation would not exceed €253.95..."

4. Ms. Coughlan goes on to aver in paras. 4 and 5 of her affidavit:

"[4] I say that the decision in Bank of Ireland Mortgage Bank v. Laura Finnegan and Christopher Ward [2015] IEHC 304, was delivered on the 20th of May, 2015, subsequent to the order for possession being made by the Circuit Court on the 18th of December, 2014. This decision discounted the use of these letters from local authorities to prove jurisdiction.

[5] I say that on foot of the High Court appeal lodged by the appellant, I did, on behalf of the respondent, apply to the Valuations Office pursuant to s. 67 of the Valuations Act 2001 for a determination of rateable valuation. I say that this determination which issued proves that the rateable valuation of the property the subject matter of these proceedings, is not in excess of the Circuit Court jurisdiction."

5. She then exhibits the relevant document from the valuation office dated the 15th of September, 2015, in the following terms:

"Re: application to the Commissioner of Valuation for determination of value, pursuant to s. 67 of the Valuation Act 2001.

Subject property address: 84 Country Meadows, Cloonthua, Tuam, County Galway.

I refer to your application to the Commissioner of Valuation for determination of rateable value pursuant to Section 67 of the Valuation Act 2001. The rateable value of the property has been determined as €15.75.

Cathal Farrell

A duly authorised officer of the Commissioner of Valuation."

The Principal Issue Raised on this Appeal

6. Mr. Hanley, in the course of taking objections to the order of the Circuit Court herein, submitted that the proceedings were initiated in the Circuit Court grounded on the jurisdiction of rateable valuation and therefore were invalid. I take him by this submission to mean that as the bank did not properly establish the rateable valuation of the property in the Circuit Court, no order should have been made by that court. Mr. Hanley also objected to the s. 67 certificate and submitted that it did not constitute sufficient evidence of rateable valuation.

7. Mr. O'Neill S.C. for the bank submitted that the order of the Circuit Court was made within jurisdiction but even if it were not, the appeal to the High Court was a *de novo* hearing and the proofs were clearly now in order, a certificate of rateable valuation having been obtained in the interim establishing the jurisdiction.

Evolution of Jurisdiction of the Circuit Court in Property Disputes

8. Section 79 of the Civil Bill Courts (Ireland) Act 1851 conferred jurisdiction on Civil Bill Courts in relation to ejectments. It provided that all disputes and differences respecting the possession of any lands tenements or hereditaments might be determined by a Civil Bill Court subject to certain limitations with regard to the duration of the instrument under which the lands were held and the yearly rent reserved payable on foot of such instrument.

9. That jurisdiction was extended by s. 1 of the Civil Bill Courts (Ireland) Act 1874 to Civil Bill actions in which the title to any corporeal or incorporeal hereditament shall come into question when the value of the land in dispute did not exceed a certain figure by the year as valued under the Acts relating to valuation of rateable property in Ireland.

10. The jurisdiction was further extended by s. 33 of the County Officers and Courts (Ireland) Act 1877 which provided:

"The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction now possessed by them, have and exercise all the power and authority of the High Court of Chancery in the suits and matters herein-after mentioned; that is to say,...

(c) In all suits for foreclosure sale or redemption of, or for enforcing any mortgage charge or lien upon, lands where the mortgage charge or lien shall not exceed in amount five hundred pounds, and the annual value of the lands to which the suit relates shall not exceed thirty pounds:"

11. Section 7 of the 1877 Act defined a Civil Bill Court in the following manner:

"The term 'Civil Bill Court' shall include any court for the transaction of civil business held before any chairman or recorder, and any land court, and any court of quarter sessions for the transaction of licensing business:"

12. Section 3 of the Act provided for the title of the chairmen as follows:

"The chairmen, not being Recorders, shall be styled "County Court Judges and Chairmen of Quarter Sessions."

13. The jurisdiction of the Civil Bill Courts was transferred to the former Circuit Court by s. 51 of the Courts of Justice Act 1924:

"There shall be transferred to the Circuit Court all jurisdiction not hereinbefore expressly excepted which, at the commencement of this Act, was vested in or capable of being exercised by Recorders, County Court Judges, and Chairmen and Courts of Quarter Sessions, or any of the same in *Saorstát Éireann* (save such jurisdiction of Justices at or of Courts of Quarter Sessions as is hereinafter conferred on or transferred to the District Court) and the provisions of Sections 21 and 22 of this Act shall apply *mutatis mutandis* to the jurisdiction vested in and transferred to the Circuit Court by this Act."

14. Section 51 of the 1924 Act was repealed by the Courts (Supplemental Provisions) Act 1961 which transferred the jurisdiction of the former Circuit Court to the present Circuit Court. Section 22 (5) (a) provided:

"There shall also be vested in the Circuit Court all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing Circuit Court."

15. Section 48 (1) (a) then provides:

"Subject to paragraph (b) of this subsection, this section applies to the following enactments—

(i) any enactment contained in the Courts of Justice Acts, 1924 to 1961, the Court Officers Acts, 1926 to 1961, or the Criminal Justice Act, 1951..."

16. Accordingly, as appears from the foregoing, the jurisdiction conferred by the 1877 Act, which remains in force, on the Civil Bill Courts continues to be enjoyed by the present Circuit Court. That is reflected in the provisions of O. 67 r. 8 of the Rules of the Circuit Court:

"Where the jurisdiction transferred to the [*Circuit*] Court under Section 51 of the Courts of Justice Act, 1924 (and thereafter established by section 4 of the Courts (Establishment and Constitution) Act, 1961) depends upon statute, each such Statute is hereby adapted or modified so that all reference therein to the Civil Bill Court, County Court, or Court of Quarter Sessions shall be construed to refer to the [*Circuit*] Court where necessary, and all references to Recorders, County Court Judges, Chairmen of Quarter Sessions, or other Judges, and to Officers of any such Courts shall be construed where necessary as references to the Judge of the [*Circuit*] Court, and, in the cases of Officers, to the County Registrar or appropriate Officer of the [*Circuit*] Court, and all references to proceedings in any of such Courts, shall, where necessary, be construed as references to proceedings in the [*Circuit*] Court."

17. The jurisdiction of the present Circuit Court is provided for by s. 22 (1) of the Courts (Supplemental Provisions) Act 1961:

"(a) Subject to paragraphs (b) and (c) of this subsection, the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine any proceedings of the kind mentioned in column (2) of the

Third Schedule to this Act at any reference number.

(b) Unless the necessary parties to the proceedings in a cause sign, either before or at any time during the hearing, the form of consent prescribed by rules of court, the Circuit Court shall not, by virtue of paragraph (a) of this subsection, have jurisdiction to hear and determine any cause of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference number in the case mentioned in column (3) of the said Schedule at that reference number..."

18. The Third Schedule to the Act contains the subheading:

"Civil Proceedings In Respect Of Which The Jurisdiction Of The High Court Is, With Quantitative Limitations, Conferred On The Circuit Court, And Judges Of The Circuit Court By Whom The Jurisdiction Is To Be Exercised"

19. The Schedule then sets out in tabular form four separate columns numbered (1) to (4) respectively. Column number (1) contains the reference number of the particular category of civil action concerned of which there are 29. Column number (2) is entitled "Civil proceedings in respect of which jurisdiction is conferred on the Circuit Court" and describes in each instance the category of proceedings concerned. The relevant category in this instance appears to be number 28 which is:

"Proceedings in relation to property not hereinbefore specified in this Schedule and which immediately before the commencement of Part I of the Courts of Justice Act, 1924 (No. 10 of 1924), were assigned to the Chancery Division of the former High Court of Justice in Southern Ireland, other than proceedings in relation to companies."

20. Column number (3) is entitled "Exclusion of jurisdiction (except by consent of necessary parties) in certain cases" and the entry in column (3) insofar as it relates to category 28 provides:

"Where the property—

(a) in so far as it consists of personalty, exceeds in amount or value £2,000, or

(b) in so far as it consists of land, exceeds the rateable valuation of £60."

21. Column number (4) deals with venue and is entitled "Judge of Circuit Court by whom jurisdiction is to be exercised". The rateable valuation of £60 mentioned in column (3) was subsequently amended to £200, its Euro equivalent being €253.95.

22. It seems to me that the effect of s. 22 (1) of the 1961 Act is to vest in the Circuit Court the same original jurisdiction as the High Court in relation to proceedings in the categories identified in column (2) of the Third Schedule subject only to that jurisdiction being divested where the jurisdictional limits identified in column (3) are exceeded. It follows in my view that unless and until it has been demonstrated that the jurisdictional limit has been exceeded, the Circuit Court enjoys jurisdiction. This is consistent with the views expressed by O'Hanlon J. in *Harrington v. Murphy* [1989] I.R. 207. The applicants in that case sought an order of *certiorari* quashing the decision of the Circuit Court on the grounds that it lacked jurisdiction.

23. The applicants were defendants in an action in which a number of plaintiffs sought declarations claiming rights in common over the applicant's lands. The applicants resisted the claim on the grounds, *inter alia*, that the rateable valuation of the land had not been proven to the court and that the respondent had no jurisdiction to hear and determine the case. The respondent rejected those submissions and found in favour of the plaintiffs. The High Court refused to quash that decision. In the course of his judgment, O'Hanlon J. said (at pages 208 and 209):

"The determination of this issue turned on the question of the rateable valuation of the lands in question. If it did not exceed £200, the Circuit Court had jurisdiction; if it exceeded £200 the Court had no jurisdiction to hear and determine the claim.

It appears to be common case that this point was pressed at all stages by the defendants in the Circuit Court, who are now the applicants in the present proceedings; that no formal proof was adduced to establish what was the rateable valuation of the said lands, but that nonetheless the learned respondent allowed the case to proceed and gave a decision which was unfavourable to the applicants. It is now conceded, for the purpose of the present proceedings, that had such formal evidence been given it would have established that the rateable valuation of the lands in question was £13.50, which would have placed the cause of action firmly within the jurisdiction of the Circuit Court.

The applicants claim that formal proof of the rateable valuation of the lands was necessary in order to give the respondent jurisdiction to entertain the claim, but I do not construe the provisions of the Courts (Supplemental Provisions) Act, 1961, s. 22 and the Third Schedule to the Act (as amended) in this manner. It appears to me that proof should be given in every case to show that the matter is within the jurisdiction of the court, but that if it is not given and the case is allowed to proceed a situation arises in which the court may or may not have jurisdiction to deal with the dispute which is being litigated before it. If it proceeds to judgment and it transpires that the matter was not within the proper jurisdiction of the Circuit Court, then the court has made an order without having jurisdiction to do so and that order should, in the normal course of events, be set aside, *ex debito justitiae*, on the application of a party who is affected by the making of the order."

As appears from the judgment, the case was defended in the Circuit Court by the applicants on the same basis as here, i.e. that absent proof of rateable valuation, the court had no jurisdiction to hear the claim.

24. It is clear that the court concluded that the failure to prove the rateable valuation did not deprive the Circuit Court of jurisdiction. However, were it established by evidence that the rateable valuation exceeded the limit, the jurisdiction would fall away. O'Hanlon J. considered that proof of rateable valuation should be adduced to avoid a situation where it might subsequently be demonstrated that the court did not have jurisdiction because the rateable valuation transpired to be in excess of the prescribed limit and thus the order could be quashed. In *Meagher v. Woods* [2015] IEHC 464, the High Court (Baker J.) in commenting on this decision said (at para. 24):

"If the Circuit Court makes an order in respect of land where the rateable valuation of those lands exceeds €254, the High Court would set aside such order *ex debito justitiae*, as having been without jurisdiction. This was established albeit obiter in the judicial review brought against a decision of Judge Murphy in *Harrington v. Murphy* [1989] I.R. 207, but O'Hanlon J. refused to make an order of *certiorari*, he being satisfied that the lands, the subject matter of the proceedings, had a rateable valuation under the statutory limit. The applicants failed to persuade the Court that failure to adduce formal

proof of rateable valuation meant that the Circuit Court acted without jurisdiction, and O'Hanlon J. held that the failure to insist on proper proof did not deprive the Circuit Court of jurisdiction, nor did it invalidate the order made by that Court."

25. It must follow therefore that s. 22 (1) of the 1961 Act does not require that the property in issue has a rateable valuation in order to confer jurisdiction on the Circuit Court. However, absent such proof being adduced by the plaintiff, he takes the risk that the Circuit Court or the High Court on appeal may be deprived of jurisdiction if the defendant establishes that there is a rateable valuation and it exceeds the statutory limit.

26. This is also consistent with the terms of s. 37 of the County Officers and Courts (Ireland) Act 1877 which provides:

"If during the progress of any suit or matter pending in a Civil Bill Court under this part of this Act it shall be made to appear to the chairman that the subject matter exceeds the limit of amount or value to which the jurisdiction of the chairman is hereby limited, it shall not affect the validity of any order or decree theretofore made, but unless the parties shall, by a memorandum or consent signed by them or their respective attorneys, consent that the chairman shall proceed in and determine the said suit or matter, the chairman shall direct the said suit or matter to be transferred to the Lord Chancellor, who may regulate the whole of the further proceedings in the said suit or matter when so transferred, and may either retain the said cause within his own jurisdiction for his own decision, or if it shall appear to him for the interest of justice that the same should proceed in the Civil Bill Court where it was commenced may so direct; and such order or consent of the parties shall confer jurisdiction on such court to proceed in and determine such suit or matter, and the decree or order of the Civil Bill Court in any such suit or matter shall be subject to appeal, except in cases of consent in which the memorandum shall otherwise provide."

This section explicitly recognises that the validity of any order made by the Civil Bill Court while a suit is pending is unaffected where it subsequently appears that the subject matter exceeds the limit of the jurisdiction and where such appears, the court shall transfer the matter to the Lord Chancellor, now the High Court. Undoubtedly the Circuit Court continues to enjoy jurisdiction to, and routinely does, transfer cases to the High Court where, for example, it becomes apparent that the quantum of the plaintiff's claim may exceed the limit of the Circuit Court jurisdiction.

27. The property in issue here is not rateable as it falls into one of the categories of premises which is not rateable by virtue of the Valuation Act 2001 being "domestic premises" as defined. In the present case, as a secondary position to reliance on the s. 67 certificate, the bank argues that as the property has no rateable valuation, it cannot have a rateable valuation which exceeds €253.95 and accordingly the Circuit Court has jurisdiction as does this court. In my view, this submission is correct.

Evidence of Rateable Valuation

28. The 1877 Act facilitates proof of rateable valuation where such is required for the purposes of any proceedings under the Act in s. 31:

"Whenever for the purposes of any proceeding under the provisions of this Act it shall be necessary to ascertain the annual value of any lands, such annual value shall in all cases where there shall be a separate valuation of the whole or any part of the lands, under the Acts in force for the time being for the valuation of rateable property in Ireland, be established as to such lands or part thereof by proof of such valuation, and in all cases where there shall not be such a separate valuation of the whole or any part of the lands, then such annual value shall be estimated as to such lands or part thereof according to the principles of valuation prescribed by the said Acts, and may be established by any legal evidence. ..."

29. Section 54 of the 1877 Act further clarified the position regarding ejectment actions by providing:

"In the Civil Bill Courts (Ireland) Act, 1874, the words 'action in which the title to any corporeal or incorporeal hereditaments shall come in question' shall include and may be applied to any action of ejectment upon the title; and for the purposes of the said Act the annual value of any lands in question shall be estimated and may be established as provided by this Act."

30. Thus, whenever it is necessary to ascertain the annual value of any lands for the purposes of proceedings before the Circuit Court where there is no valuation of those lands, it is permissible to estimate the value of the lands according to the principles of valuation prescribed by the Valuation Acts, and establish that estimate by any legal evidence.

31. New evidence has been adduced on the appeal, which is a full rehearing *de novo*, and accordingly the appeal must be determined on the basis of the evidence before this court rather than the Circuit Court. The evidence now includes the documents to which I have referred above being the letter from the local authority and the certificate from the Valuations Office.

32. Section 67 of the Valuation Act 2001 provides as follows:

"(1) In this section 'property concerned' means property referred to in subsection (9).

(2) Notwithstanding the preceding sections of this Act, the Commissioner may, in relation to property concerned that falls within Schedule 4 and for the purpose of the provision referred to in subsection (9), on application being made to him or her in that behalf by a person who appears to the Commissioner to have a sufficient interest in the matter, cause the value of the property to be determined as if the property were relevant property rateable under this Act.

(3) The value of the property so determined shall be deemed to be the rateable valuation of the property within the meaning, and for the purpose, of the provision referred to in subsection (9).

(4) The Commissioner shall issue to the person referred to in subsection (2) a certificate stating the value of the property referred to in that subsection as determined thereunder....

(9) The provision mentioned in the preceding subsections of this section is any provision of a statute passed before the commencement of this Act, or of an instrument made under such a statute, which imposes as a condition or as one of the conditions for the enjoyment of, or the entitlement to, any right under the statute or instrument a condition expressed to relate to the rateable valuation of a property."

33. As I have said, the bank relies on the document purporting to have been issued by the Valuations Office pursuant to s. 67,

exhibited in Ms. Coughlan's affidavit, as sufficient evidence of its contents. On its face, this document is clearly hearsay evidence and would not in the normal way be admissible in the absence of evidence from the person who created it. Frequently, statutes providing for the creation of certificates necessary to prove a matter also provide that they shall be sufficient evidence of their contents until the contrary is proved. Indeed, such a provision is to be found in the Valuation Act 2001 itself at s. 60:

"(1) A copy of a valuation list or part of such a list which is certified by an officer of the Commissioner, duly authorised by the Commissioner in that behalf, to be such a copy shall, until the contrary is proved, be regarded as a true copy of that list or part.

(2) The production to the Tribunal or a court of a document purporting to be a copy of a valuation list or part of such a list and to be certified as such a copy by an officer of the Commissioner shall, without proof of the signature of that officer or that he or she was an officer of the Commissioner duly authorised by the Commissioner to so certify the document, be sufficient evidence, until the contrary is proved, of the matters stated in the document."

34. It is notable that there is no equivalent provision in the 2001 Act in relation to s. 67 certificates which are clearly separate and distinct from the valuation list. It seems to me that s. 31 of the 1877 Act does not assist here as a hearsay document could not be regarded as "legal evidence". In my view therefore, the bank is not entitled to rely on the purported s. 67 certificate in this case. The same applies, *a fortiori*, to the letter from the local authority.

35. However, for the reasons already explained, I am of the view that these do not constitute essential proofs to enable the bank to succeed in its claim.

36. In *Bank of Ireland Mortgage Bank v. Finnegan and Anor* [2015] IEHC 304, Murphy J. had to consider facts not dissimilar to those arising in this case. In particular, the plaintiff bank relied upon a letter from the Valuation Office similar in its terms to the letter of the 4th of November, 2013, from the local authority in this case. The plaintiff bank in Finnegan submitted that the letter constituted a certificate of valuation for the purposes of s. 67 of the Valuation Act 2001, above referred to. Having heard oral evidence from a senior official in the Valuations Office, Murphy J. concluded that the letter in issue was clearly not a certificate of valuation within the meaning of s. 67. The court expressly disapproved the practice of issuing such letters.

37. The court went on to dismiss the claim on the basis that, as the rateable valuation of the property had not been established, the Circuit Court, and the High Court on appeal, had no jurisdiction to hear and determine the claim.

38. In expressing my view on the jurisdiction of the Circuit Court in these proceedings, I am acutely conscious of the fact that I have arrived at a different conclusion to that of Murphy J. in Finnegan. I do so with considerable hesitation and reluctance. The circumstances in which a court may decline to follow the judgment of a court of equal jurisdiction were considered by Clarke J. in *In the Matter of Worldport Ireland Ltd (In Liquidation)* [2005] IEHC 189. In that case, an issue of law arose which had been determined in a previous judgment of the High Court, delivered some four years earlier, in 2001. One of the parties urged on the court that the earlier decision was wrongly decided and ought not be followed. In considering this issue, Clarke J. said (at p. 3-4):

"I have come to the view that it would not be appropriate, in all the circumstances of this case, for me to revisit the issue so recently decided by Kearns J. in *Industrial Services*. It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong. *Huddersfield Police Authority v Watson* [1947] K.B. 842 at 848, *Re Howard's Will Trusts, Leven & Bradley* [1961] Ch. 507 at 523. Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced argument. If each time such a point were to arise again a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered. In the absence of a definitive ruling from the Supreme Court on this matter I do not, therefore, consider that it is appropriate for me to consider again the issue so recently decided by Kearns J. and I intend, therefore, that I should follow the ratio in *Industrial Services* and decline to take the view, as urged by counsel for the Bank, that that case was wrongly decided."

39. It appears to me to be of considerable importance that in *Finnegan*, the court's attention seems not to have been drawn to the provisions of the 1877 Act and in particular ss. 31 and 37 thereof. Had that been done, it seems to me that it is at least possible that the court might have reached a different conclusion.

40. It is of course to be regretted that as a result of this judgment, conflicting opinions have now been expressed by this court with regard to the jurisdiction of the Circuit Court. This is clearly an unsatisfactory situation, compounded by the fact that this is a Circuit Appeal with no further opportunity for an appellate court to consider and settle the issues that arise. It is to be hoped that such opportunity presents itself in the very near future.

Other Issues Raised by Mr. Hanley

41. Mr. Hanley takes objection to the verifying affidavits of John Hughes on the basis that they do not comply with the provisions of O. 25 r. 3 of the Circuit Court Rules which requires that all affidavits shall state the deponent's occupation and place of residence, whereas Mr. Hughes merely states his business address. A similar objection was dealt with by the Court of Appeal in *Kearney v. Bank of Scotland and Anor* [2015] IECA 32.

42. In the course of delivering the court's judgment, Kelly J. referred with approval to some early authorities on the topic:

"[9] In *Haslope v. Thorne* [1813] 1 M & S 102, Lord Ellenborough C.J. is reported in relation to this form of objection as follows:-

'...the words 'place of abode' did not necessarily mean the place where the deponent sleeps, that the object of the rule was to ascertain the place where the deponent was most usually to be found, which in the present case was the office at which he is employed during the greater part of the day and not the place where he would retire for the purpose of

rest’.

So there, as far back as 1813, one finds a common sense approach being taken to the interpretation of the rule. The court asked itself ‘what is the purpose of this rule?’ The purpose of the rule is to apprise the reader of the affidavit as to where the deponent of the affidavit may be found. For most people in business life, they are much more likely to be found at their place of business during ordinary business hours than they are at their homes.

[10] Again one finds the topic being considered by Lord Campbell C.J. in *Blackwell v. England* [1857] 8 EL & BL 540 . He said in the course of that decision:

‘I am of opinion that in this Act also the object of the legislature is better attained by giving as a description of the residence of the solicitor’s clerk the office where he attends all day then if it gave the place where he passes the night. The object of the legislature was to secure means of identifying and tracing the attesting witness, this is the description which best fulfils that object and such I think is the object of the legislature when it requires a statement of his residence and occupation.’

Again a purposive approach was taken to a similar statutory requirement.”

43. In my view therefore, Mr. Hanley’s objection is misconceived. In any event O. 24 r. 8 of the Rules of the Circuit Court empowers the judge to receive any affidavit notwithstanding a defect by misdescription of parties and in that event direct a memorandum to be made on the document that it has been so received. However that does not arise here because there is in fact no misdescription.

44. Mr. Hanley raises a further point on the affidavits that they appear to have been sworn before a solicitor acting on the bank’s behalf and thus O. 25 r. 4 has been contravened. However, I think it is clear that this is simply a misunderstanding on his part in relation to the identity of the solicitor in question who is not connected to the bank.

45. Mr. Hanley raises the further issue that the letter of loan offer from the bank dated the 21st of May, 2007, does not contain a true signature of the bank official that he had dealt with. However, that is clearly not material as it has been signed by Mr. Hanley.

46. Finally Mr. Hanley complains of fraud on the part of the bank with regard to the execution of the Mortgage Deed and the fact that two different version of his signature appear on it. Again I think this is a simple misunderstanding on his part because the Mortgage Deed was signed in duplicate so that there is in fact nothing untoward about the signature. Mr. Hanley complains of the fact that he was not afforded an adequate opportunity to examine the Mortgage Deed but I am satisfied that there is no substance in this complaint. He accepts that he was given the opportunity of inspecting the original documents in the offices of the bank’s solicitor and he sent his mother along to do so.

Conclusion

47. Accordingly, I am satisfied that Mr. Hanley has not established any defence to the bank’s claim herein and I must therefore affirm the Order of the Circuit Court.