

**THE HIGH COURT  
CIRCUIT APPEAL**

**RECORD NO. LNT2/06**

**MIDLAND CIRCUIT**

**COUNTY OF SLIGO**

**BETWEEN**

**MICHAEL HEMANI**

**AND**

**ULSTER BANK (IRELAND) LIMITED**

**JUDGMENT delivered by Mr. Justice Michael White on the 14th day of May, 2015**

1. This is an Appeal from an Order of the Circuit Court of the 15th March, 2013, at Sligo Circuit Court, when the terms of the Plaintiff's tenancy at 52 O'Connell Street, Sligo being part of the building on the 2nd Floor at the corner of O'Connell and Grattan Street were fixed at the rent of €6,100 per year, together with a direction on covenants to repair. The Plaintiff was granted 50% of his costs.
2. The Plaintiff's Grounds of Appeal of the 25th March, 2013, take issue with
  - (1) The valuation of the open market rental upon the tenancy of the subject premises.
  - (2) The terms and conditions regarding the repair and maintenance covenants referable to the aforesaid Lease of the subject premises.
  - (3) The issue of costs as between the Plaintiff and the Defendant.
3. On the 14th of November, 2014, the action was transferred to the High Court in Dublin.
4. The Plaintiff while represented by solicitor and counsel in the Circuit Court represents himself on appeal.
5. The Plaintiff was granted an oral tenancy of the 2nd Floor of the premises in May 1978. There are no written terms, or any documentation to assist the Court in its interpretation. The Plaintiff has always maintained that both external and internal repairs were the responsibility of the Landlord. The original Landlady was Peggy Fitzgerald. In or around 1982/1983 Ms. Fitzgerald sold the property to First Active plc. The building was refurbished in 1983. The rent at the date of service of the Notice To Quit was €220 per month. The present Defendant took over First Active plc in or around 1990. The first Notice to Quit was served in 2003. From 2003 there has been a difficult relationship between the Plaintiff and Defendant. The Plaintiff alleges a failure by the Defendant to carry out essential repairs to the property. The Defendant alleges that the Plaintiff has acted unreasonably in preventing access to the property, frustrated repairs, and delayed the legal proceedings.
6. There has been a difficult history to these proceedings.
7. The Notice to Quit was served on the 28th March, 2006. An Ejectment Civil Bill for Overholding was issued on the 1st August, 2006.
8. The Plaintiff then served a Notice of Intention to Claim Relief on the 27th November, 2006, and issued a Landlord and Tenant Civil Bill on the 5th December, 2006.
9. The action was not heard in the Circuit Court in Sligo for 6 years, when it was ultimately decided on the 15th March, 2013.
10. Subsequent to the Plaintiff's Notice of Appeal of the 25th March, 2013, a Fire Safety Notice was served on the Defendant on the 4th July, 2013, directing the owners of the property to carry out essential repairs.
11. There was further difficulty between the Plaintiff and the Defendant about the execution of these repairs.
12. The matter came before the High Court in Sligo on the 9th May, 2014, when Mr. Justice Barry White gave the following directions:-

"It would seem to me that if there is to be an adjournment of this matter until the July sessions there would be in the first instance a Direction from me that the matter be marked peremptory in capital red letters as against Mr. Hemani but it would seem to me that also if it is to be adjourned, where there are obviously works that are required and there are requirements of the Fire Officer from the point of view of health and safety, that some form of undertaking should be

given by the Landlord in relation to the carrying out of the works, that they ... were to be commenced by a particular date and that the estimated duration of the work is x number of weeks, obviously if matters unfold in the course of that work that require the works to be continued on, then that would obviously have to be provided for, and there should be an undertaking by Mr. Hemani to move out of the premises while the works are carried out, that there would be an undertaking from the Landlord that Mr. Hemani would be permitted to return to the premises when the works have been carried out and there would be an undertaking from the Landlord that his moving out would not in any way prejudice his rights in relation to a tenancy and that there would be an undertaking on the part of the Landlord to discharge his reasonable costs of moving out of the premises for the period in question and something along those lines, Mr. Fogarty I think would meet the equity of the situation. "

13. An undertaking was provided to the Court by the Defendant.

14. The essence of the undertaking was that the Defendant would carry out essential structural repairs, that the Plaintiff would move out of the premises but certain pieces of large equipment would be stored safely in the premises during the construction phase of the work and that any rental due during the construction phase would be suspended. The Plaintiff was to be paid compensation during his time out of the premises and certain other removal and advertising costs.

15. The Plaintiff moved out and substantial works have been carried out to the premises. There is now a dispute between the parties as to when they were ready for occupation and a dispute about damage to equipment stored in the premises during the refurbishment work.

16. The Plaintiff has claimed €86,999 for reimbursement of cost of replacement of damaged equipment and loss of income from customers due to a poor working environment.

17. The Plaintiff issued a Notice of Motion alleging that the Defendant has been in contempt of Court as a result of non compliance with the undertakings given by the Defendant on the 9th May, 2014, to the Honourable Mr. Justice Barry White at the High Court on Circuit hearing in Sligo and seeking all necessary and consequential Orders and providing for the costs of the Motion.

18. This Court does not have jurisdiction to consider the loss of income claim for a period of three years by the Plaintiff totalling the sum of €61,128.

19. The Court has jurisdiction to consider the claim for the damage to the equipment which was supposed to be stored safely.

20. The matters the Court has to address are:-

- (1) The appropriate rent.
- (2) The commencement of the Lease.
- (3) The terms of the Lease.
- (4) The date when the premises were ready for occupation after the refurbishment work.
- (5) Does the Landlord have a responsibility to put in heating, and ancillary matters
- (6) The Costs Order in the Circuit Court.

21. It is unfortunate that this matter has taken so long to resolve now 9 years since the date of service of the Notice to Quit.

22. Both parties have responsibility for this state of affairs.

23. The fact that substantial repairs had to be undertaken subsequent to the service of the Fire Safety Notice, indicates the Defendant did not properly observe implied covenants to repair under the Lease. There was a failure of the Defendants to address these issues over a period of years in a timely manner. The Defendant had acquired a sitting tenant with an oral tenancy and should have been more proactive to ensure that the fabric of the building was secured and that the building complied with relevant Fire Safety Regulations. The Defendant was confronted by a lot of unreasonable behaviour on the part of the Plaintiff, who was in occupation at a very reasonable rent, and was not proactive about addressing repairs. He may well be right that the original oral tenancy between himself and Ms. Fitzgerald developed the convention that the Landlady did all repairs which is not the normal covenant in a Commercial Lease whereby the tenant usually assumes responsibility for maintaining the premises internally. Those issues are now historical although they have some bearing on the Court's decision in that after the service of the Fire Safety Notice, this Court is satisfied that the Defendants embarked on a programme of refurbishment, which in many ways went beyond their remit, and the Court is quite satisfied that the present condition of the premises is satisfactory.

24. There is no requirement on the Defendant to install any form of heating system, that is a matter for the Plaintiff. Likewise the issue of the phones, carpets and security meshes for windows are a matter for the Plaintiff.

25. The Court considers the e mail of 14th November 2014 from Conor McShane, Assistant Chief Fire Officer of Sligo Fire Service as sufficient indication that the premises were ready for occupation.

26. The Plaintiff although rightly concerned about the damage to his equipment had a duty to minimise his loss and take up possession as soon as he could. It is reasonable to give him some time to get reorganised and to decide what to do in respect of the equipment. I consider it appropriate to fix the 7th January, 2015, as a date for the Plaintiff to take up possession of the premises again and when the Defendant would no longer be liable for any compensatory payments to the Plaintiff.

27. The appropriate term is 17 years commencing on and including the 16th May, 2006.

28. It is appropriate that the Landlord be responsible for the repair and maintenance of the exterior of the building including the roof and the windows. The Plaintiff should be responsible for the internal repairs and maintenance of the demise. Due to the difficult history of this landlord and tenant relationship the clauses in the Draft Lease at 4.5 and 5.2 should be more strictly defined. I agree with the Order made by the Learned Circuit Court Judge on the 15th March, 2013, on repairing covenants.

29. The issue of costs in the Circuit Court was at the discretion of the Trial Judge and I will not interfere with that Order.

30. Due to the substantial delay in this matter being finalised the Court will deem that the rent review due in 2011 has taken place and that the next review will occur on the 16th May, 2016.

31. The Court in considering the evidence in respect of the rental of the property finds that an appropriate annual rent from the commencement of the Lease on the 16th May, 2006, up to the review on the 16th May, 2016, is the sum of €5,200 per year.

32. The only matters outstanding for the Court to consider are any outstanding terms in the Lease and to resolve any outstanding issues in respect of the damaged equipment, and any other matters outstanding in respect of the undertaking given to Mr. Justice Barry White on the 9th May, 2014. The court also has to deal with costs in this court.