THE HIGH COURT

1983 No. 753 SS

IN THE MATTER OF SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961

AND IN THE MATTER OF AN APPLICATION TO THE DUBLIN METROPOLITAN DISTRICT COURT UNDER SECTION 12 OF THE HOUSING (PRIVATE RENTED DWELLINGS) ACT, 1982

BETWEEN:

FOLIO HOMES LIMITED

APPLICANTS

AND

EDMOND ABBOTT

RESPONDENT

Judgment of O'Hanlon J., delivered the 2nd day of February, 1984.

This is a Case Stated by District Justice Brian Kirby for the determination by the High Court of a question of law arising in proceedings before him, and in exercise of the jurisdiction conferred on him by Sec. 52 of the Courts (Supplemental Provisions) Act, 1961.

The question of law which requires determination is whether the Applicants, Folio Homes Limited, are precluded by the provisions of the Housing (Private Rented Dwellings) (Amendment) Act, 1983, Sec. 5, sub-sec. (6) from proceeding before the District Court with an application under The Housing (Private Rented Dwellings) Act, 1982, Sec. 12, for an Order to fix terms (including rent) for the letting of a premises at 8 Carnew Street,

Dublin 7, held by the Respondent as tenant to the Applicants.

The problem has arisen in the following manner. On the 7th July, 1983, Notice of Application, duly stamped, and signed by the Solicitor for the Applicants, pursuant to Sec. 12(1) of the said Act of 1982 was, with two copies, presented at the District Court Office for the allocation, and insertion therein, of a date, time and place for hearing, and a court record number.

The hearing date allotted was the 24th November, 1983, and that date, and a time and court and record number were inserted by the District Court Clerk in the Notice, and the copies, and the original Notice and copies were handed back to the Applicants' Solicitor on the 7th July, 1983.

The date of enactment of the Act of 1983 was the 13th July, 1983, and it came into operation on the 2nd August, 1983 by Ministerial Order No. 221 of 1983. Sec. 5 of that Act provides that applications may be made to the Rent Tribunal established under the Act (or, in certain cases, to a rent officer) to fix the terms of the tenancy of premises which were formerly regarded as "controlled premises" under the Rent Restrictions Acts, and sub-sec. (6) of Sec. 5 provides as follows:-

"(6) No Application may be made under section 12(1) of the Act of

1982 after the commencement of this section".

The Notice of Application to the District Court in the present case had not been served by the time the 1983 Act came into force. It was served on the Respondent by registered post on the 10th October, 1983, and on the 12th November, 1983, the Notice, with statutory declaration of service endorsed thereon, was lodged with the District Court Clerk. Prior to the service of the Notice by registered post, the Applicants' Solicitor had written to the Respondent on the 3rd October, 1983, giving him notice of the Applicants' intention to apply to the District Court under Sec. 12 of the Act of 1982.

Before the matter came on for hearing before the District Court on the 24th November, 1983, an application was made to the District Justice on the 18th November, 1983, to decline jurisdiction in the matter by reason of the overriding provisions of Sec. 5(6) of the amending Act of 1983, and to refer for the determination of the High Court the question whether in the circumstances of the present case the Applicants are now entitled to go ahead with their application under the Act of 1982 or are confined to such rights as are given to them by the amending Act of 1983.

The decision of this question appears to me to turn upon the construction which should be placed upon the phrases "the landlord or the

tenant of a dwelling .. may apply to the Court", as found in Sec. 12, sub-sec. (1) of the Act of 1982, and "no application may be made under section 12(1) of the Act of 1982", as found in Sec. 5 sub-sec. (6) of the amending Act of 1983.

At what stage should the Applicants be regarded as having "applied" to the District Court under Sec. 12 (1) of the Act of 1982 - when the Notice of Application, duly stamped and with the date of hearing and Court Number endorsed thereon, was handed back to their Solicitor for service, or when they complied with Sec. 12(5) of the Act of 1982 which requires that -

"The landlord or tenant making an application under subsection (1) shall give one month's notice in writing to the other party of his intention to make the application"?

In the further alternative, can it be said that application is not made to the Court for the purpose of the Section until the matter comes on for hearing?

Rule 7(1) of the District Court (Housing (Private Rented Dwellings) Act, 1982) Rules, 1982, (S.I. No. 296 of 1982), provides as follows:-

"7(1) An application under Section 12(1) of the Act for an Order fixing the terms of a tenancy shall be by notice in the Form 3 which shall be served on the other party".

Form 3 in the Schedule of Forms is short and simple. It merely recites as follows:-

> "TAKE NOTICE that .....of ..... being the landlord/tenant of the dwelling ..... in the court area and district aforesaid to which section 8(1) of the Act relates, will apply to the District Court to be held at ..... on the ..... day of ..... 19.. at .....m. for an order fixing the terms of the tenancy of the dwelling".

It is also relevant to note that Sec. 14 of the Act of 1982 empowered the Court, when fixing the rent under section 12, to order payment of the difference between the rent fixed by the Court and the existing rent (or part of such difference) in respect of the period from the date of the service of notice of intention under subsection (5) of that section and the date of the order of the Court. Counsel for the Respondent suggested that this was an indication to be derived from the Statute itself that the proceedings could be regarded as having been commenced when notice of intention to apply was served on the other party.

The Applicants say, in effect, - "We were not affected by the provisions of Sec. 5 (6) of the Act of 1983, because by the time that Act was passed and brought into operation we had already "applied" to the District Court by means of the steps taken on our behalf on the 7th July, 1983. From that time onwards the District Court had seisin of the case, but we were bound by the Act and the Rules made thereunder to take certain other procedural steps before the

matter actually came on for hearing".

I cannot agree that the Applicants should be regarded as having "applied" to the District Court within the meaning of Sec. 12 (1) of the Act of 1982 when they obtained a date and time and Court number for the hearing of the application and had these particulars together with a record number endorsed on their originating document by the District Court Clerk, and the document returned to them for service.

I am of opinion that the meaning and intention of Sec. 5(6) of the Act of 1983 is to halt in their tracks any applications which have not come on for hearing before the District Court at the time of the coming into operation of the Act, and to compel the parties, if they see fit to do so, to resort instead to the Rent Tribunal or to a rent officer appointed under the amending Act.

The only document that need be served under Sec. 12 of the Act of 1982 is a "notice of intention to make an application", and this is what is found in the Form scheduled to the Rules adopted for the purposes of the Act.

This form may be contrasted with the forms found in the Schedule to the Rules of the Circuit Court dealing with applications formerly made under the provisions of the Rent Restrictions Acts, and the Landlord and Tenant

Acts, and which, without exception, commence with the words, "TAKE NOTICE that the above-named Applicant of ..... hereby applies to the Court sitting at .....", so that the Notice is itself couched in language appropriate to an application, rather than a notice of intention to apply at some time in the future.

As to when proceedings may be regarded as having commenced in either court, there is also a discrepancy which may be of some significance as between the District Court Rules and the Circuit Court Rules in relation to ordinary civil proceedings.

Rule 114 of the District Court Rules, 1948 states,

> "All civil proceedings shall be originated by the issue and service in the manner hereinafter provided of a Civil Process in the appropriate form.
> A Civil Process shall be deemed to have been issued when it has been stamped, signed and handed or sent by post to a summons server".

Order 5, Rule 1 of the Circuit Court Rules, 1950, is as follows:

> "1. Civil proceedings in the Court shall, unless otherwise provided by Statute or by these Rules, be instituted by the issue of a Civil Bill, which shall be in accordance with one of the Forms in the Schedule ......".

A special procedure was devised for the purpose of Sec. 12 of the Act of 1982 which did not require the use of a Civil Process. At best, from the Applicants' point of view, I am of opinion that their application to the District Court might be regarded as having been made when they gave notice

of intention to apply by service of the requisite document on the Respondent, in compliance with Sec. 12 (5) of the Act of 1982; at worst, when the application was listed for hearing before the Court. In either event, they are out of time by reason of the provisions of Sec. 5 (6) of the amending Act of 1983 and the learned District Justice has no option but to decline jurisdiction accordingly.

Mr. McCracken, for the Applicants, urged that the amending Act of 1983 should be construed, if at all possible, in a manner which would be consistent with the Constitution. He further contended that to deprive the District Court of its jurisdiction to hear and determine a matter which was listed for hearing before it, and to transfer that jurisdiction to a lay tribunal, would amount to an unconstitutional interference with the administration of justice by the Courts, similar to that which had arisen in the circumstances of the Sinn Fein Funds case, (Buckley & Ors. (Sinn Fein) .v. A.G. & Anor., (1950) IR 67 , and in The State (C.) .v. The Minister for Justice, (1967) IR 106.

I have already given my conclusion as to the manner in which, in my opinion, Sec. 5, sub-sec. (6) of the Act of 1983 must be interpreted. I consider that it would be inappropriate for me in the present proceedings,

to express any view on the constitutionality of that Act, or any part thereof.

R J O'Hanlon

R.J. O'Hanlon.
2nd February, 1984.

Note

Counsel for the Applicants:- Brian McCracken S.C.; with him Richard Nesbitt, B.L., (instructed by Anderson & Co., Solicitors).

Counsel for the Respondent:- Mary Robinson, S.C. ; with her, Bridget Barry, B.L., (instructed by .....,Solicitors).

Cases and Materials cited:

Pewris .v. Roche, 66 ILTR 152; 1932 LJ Ir. 105.

Nolan .v. Waterford Corporation, 69 ILTR 184.

Buckley & Ors. (Sinn Fein) .v. A.G. (1950) IR 67.

State (C.) .v. Min. for Justice, (1967) IR 106, 114, 122.