



**THE HIGH COURT**

[2022] IEHC 722

**Record No. 2015/39CA**

**Record No. 2015/40CA**

**Circuit Court Appeal**

**Circuit Court Record No. 1782/2014**

**Between/**

**Permanent TSB Plc formerly  
Irish Life and Permanent Plc**

**Plaintiff/Respondent**

**-and-**

**Start Mortgages Designated Activity Company**

**Plaintiff/ Respondent**

**-and-**

**David Langan**

**Defendant/Appellant**

**JUDGMENT of Ms. Justice Baker delivered on the 20th day of December, 2022**

1. This judgment is given in the appeal of Mr Langan against orders for possession made by Linnane J. in the Circuit Court on 23 February 2015 in respect of six properties,

all in Dublin City or County, five of which are registered, and the sixth unregistered. Proceedings were instituted in the Circuit Court by two separate civil bills, one in respect of the five registered properties, and the second for the sixth unregistered lands. All six properties are domestic dwellings which Mr Langan had let under various forms of letting agreements to tenants.

2. At the time the proceedings were instituted none of the properties had a rateable valuation, but it was pleaded that they each had a rateable valuation below €253.95.

3. The appeal of the Circuit Court orders for possession came on before me sitting as a High Court judge in the High Court on Circuit on 1 February 2016. On 4 February 2016 I informed the parties that I proposed to state a case to the Court of Appeal pursuant to the provisions of s. 38 of the Courts of Justice Act 1936, s.74 of the Court of Appeal Act 2014, and O. 86B of the Rules of the Superior Courts (“RSC”) concerning a number of questions: whether the Circuit Court has jurisdiction under s. 22(1) of the Courts (Supplemental Provisions) Act 1961 when a property is not rated; how, if there is no certificate of rateable valuation, a Circuit Court may exercise its jurisdiction; and whether, by reason of the fact property is not rateable by virtue of the Valuation Act 2001, or otherwise, the jurisdiction of the Circuit Court is automatically excluded.

4. The Court of Appeal gave judgment on 28 July 2016 ([2016] IECA 229) and thereafter an appeal was had to the Supreme Court which gave its judgment on 12 December 2017 ([2017] IESC 71).

5. The Supreme Court answered the case stated by saying first, that the jurisdiction of the Circuit Court is not excluded by reason of the fact that a property is not rateable under the provisions of the Valuation Act 2001. Second, the Court held that the Circuit Court has jurisdiction in all relevant cases provided the property in question does not

actually have a rateable valuation which exceeds €253.95. In answer to the third, fourth and fifth questions raised, the Court held that a plaintiff must “establish jurisdiction”, either by producing a certificate of rateable valuation which demonstrates that the rateable valuation is below the Circuit Court limit, or by producing admissible evidence that the property concerned does not in fact have a rateable valuation. The Court suggested that in certain circumstances an appropriate officer of the Commissioner for Valuations could give evidence that a specified property does not actually have a rateable valuation or a deemed rateable valuation.

#### **Events since Supreme Court decision**

6. The first named plaintiff, the original mortgagee, had sold its interest in the loan and security to the second named plaintiff/respondent, and an order was made on 28 March 2022 by Coffey J. adding Smart Mortgages as co-plaintiff. For clarity, I will refer to these two parties collectively as “the respondents” in the course of this judgment.

7. By notice of appeal filed on 26 April 2022, Mr Langan purported to file an appeal against the substitution order to the Court of Appeal, but by order of Costello J. made on 17 June 2022 that appeal was struck out on the grounds that the Court of Appeal did not enjoy a jurisdiction to entertain an appeal from an order of the High Court on Circuit.

#### **The new hearing after the Supreme Court decision**

8. The matter then came back for hearing before me, as the judge who had stated the case for the opinion of the Court of Appeal.

9. Following the delivery of its judgment by the Supreme Court the respondents obtained valuations in respect of the six properties the subject matter of the proceedings pursuant to s. 67 of the Valuation Act 2001 and the certificates of rateable valuation in respect of each property was exhibited in an affidavits of Niamh O'Malley sworn on the 20 June 2022 which shows that the properties had a rateable valuation of €22.86, €16.92, €26.28, €22.50, €19.84 and €12.78 respectively. The rateable valuation of the five properties combined in one civil bill therefore is within the jurisdiction of the Circuit Court, and each separately has a valuation below the jurisdictional limit.

10. When the matter came on for hearing before me Mr Langan sought an adjournment and the matter finally came to be heard on 27 July 2022 when Mr Langan made a submission concerning the means by which a plaintiff seeking possession must establish jurisdiction, and argued that on the date of the issue of a civil bill the jurisdictional requirements and proofs must be in existence, and that a plaintiff cannot rely on proofs that come into existence later.

11. For the purpose of clarifying the precise argument of Mr Langan, I proposed that written submissions be furnished by the parties to address a question formulated as follows:

“What is the purpose of an endorsement on a civil bill to establish jurisdiction?

Is it the case that it must be the fact that the rateable valuation is within the jurisdiction of the Circuit Court at the date of the issuance of the civil bill?

Or, is the endorsement regarding jurisdiction an assertion of fact that falls to be proved on evidence at trial?”

### **The grounds of appeal**

**12.** There is uncontroverted evidence that Mr Langan was, as of 31 May 2022 indebted to the respondents in the total sum of €1,933,856.71, and that the last payment made on his account was of €4,027.60 on 8 January 2018.

**13.** Start Mortgages is registered as owner of the charges in the folio, as of 15 March 2019. In the light of the conclusiveness of the register, Start Mortgages has a right to seek possession of the five registered properties on foot of the statutory power vested in the owner of the charge pursuant to s. 67 of the Registration of Title Act 1964. (See judgment in *Tanager Designated Activity Company v. Kane* [2018] IECA 352.) The mortgage created over the interest of the appellant in the sixth unregistered premises is proved.

**14.** The sole basis of appeal then is whether the civil bills were bad, as the properties the subject matter thereof were not rated at the date of issue, and the plaintiff did not have available and sufficient evidence at that date to establish jurisdiction. As the other proofs had been opened at the oral hearing, and were not contested, the parties consented to the jurisdictional question being determined without a further oral hearing.

### **Arguments**

**15.** Mr Langan argues that the jurisdictional proof must be in existence at the date the proceedings are instituted, in other words that the plea of jurisdiction must be true at the date proceedings issue. He argues that that this is so especially when the civil bill is one which seeks judgment by summary means, such as the civil bill for possession under O. 5B of the Circuit Court Rules (“CCR”).

**16.** The respondents submit that the plea as to jurisdiction is to be treated as any other plea contained in an endorsement of claim, as it is no more than an assertion which falls to be proved by evidence at hearing. The respondents argue that the judgment of

the Supreme Court means that the jurisdiction of the Circuit Court is to be established by evidence at the hearing, either by affidavit evidence, where this is appropriate in respect of the relevant mode of action, or by oral evidence.

**17.** The respondents rely on the dicta in the judgment of the Supreme Court in *Bank of Ireland Mortgage Bank v. O'Malley* [2019] IESC 84, [2020] 2 I.L.R.M. 423 that the purpose of pleadings in a summary claim is to ensure that a litigant properly knows the case they have to meet, and that once a claim is pleaded it is for a plaintiff to prove, and a defendant to challenge or dispute, the factual basis on which a claim is made. The issue of jurisdiction, along with other allegations pleaded, will be determined by the relevant court at hearing.

### **The jurisdiction of the Circuit Court**

**18.** Proceedings seeking possession of land may be commenced in the Circuit Court provided the statutory jurisdictional requirements are satisfied. The jurisdiction of that Court was established by s. 22 of the Courts (Supplemental Provisions) Act, 1961, the relevant jurisdictional basis material to the present appeals being that the rateable valuation not exceed £60. The amount of £60 was amended, and ultimately by s.2(1)(d) of the Courts Act, 1981 the jurisdictional limit was fixed at £200, later following the introduction of the Euro to €253.95 (often treated informally as €254).

**19.** Thus, the limited and local jurisdiction of the Circuit Court in certain claims regarding land is limited by reference to the location and rateable valuation of the land in respect of which relief is sought, and the Circuit Court has no form of full or inherent original jurisdiction.

**20.** For the purposes of the present appeal the six premises of which possession was sought by the civil bills each has a rateable valuation under the Circuit Court statutory

limit, and the combined rateable valuation of the five properties grouped together in one civil bill is also under that limit. The judgment of the Supreme Court is clear that a plaintiff must *establish* jurisdiction by one or other mode or proof.

**21.** For clarity, no argument is made in this case that the provisions of s. 101(6) of the Land and Conveyancing Law Reform Act 2009 as amended by s. 3 of the Land and Conveyancing Law Reform Act 2013 and s. 101(5) of the Land and Conveyancing Reform Act 2009 as amended by s. 2 of the Act of 2013 are engaged. The Circuit Court has by reason of that section now exclusive jurisdiction in respect of claims for possession for property which is subject to a housing loan mortgage irrespective of the amount of rateable valuation. Sections 2 and 3 of the Act of 2013 are not relevant to these proceedings which are not the principal private residence of the mortgagor or a relevant person within the meaning of those sections. The civil bills were issued before the commencement of S.I 346/2015 providing the form of possession proceedings in the Circuit Court within that amending legislation.

### **The role of pleadings generally**

**22.** A pleading must contain a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved. *Daniell's Chancery Practice* (8<sup>th</sup> edition, Vol. 1, 1914) sets out this old rule at page 323, and goes on to say that it is not sufficient for a plaintiff to aver that he is entitled to sue or that a defendant is liable, but that he must state in his pleadings the facts which give him that title, or which impose on the defendant that liability. Thus, it is the purpose and the nature of pleadings to identify the cause of action, the nature and basis of the claim, and the reason why it is asserted that a defendant is liable to the plaintiff in respect of the cause of action sought to be maintained.

**23.** Equally a defendant must by a defence raise all matters which in fact or in law amount to a ground of defence.

**24.** Further, a party need not allege any matter of fact which the law presumes in his favour or on which the burden of proof lies on the other side. The rule is that, if a pleading of fact is not denied specifically or by necessary implication, it is taken to be admitted.

**25.** Modern pleadings, especially a modern form of defence, will rarely deny, for example, such matters of fact as the name, place of residence or domicile of a plaintiff, or such other matters which in the normal course it is likely to be easy, albeit sometimes costly, to prove.

**26.** The Irish leading text on practice and procedure, Biehler and others, *Delany and McGrath on Civil Procedure* (4<sup>th</sup> ed., Round Hall, 2018), states (para. 5-02) the general proposition that a pleading should set out the claim or defence of a party concisely with a view to identifying the issues between the parties, and quotes from the dicta of Fitzgerald J. in *Mahon v. Celbridge Spinning Company Ltd* [1967] I.R. 1 (at p. 3) that a party “should know in advance, in broad outline, the case it had to meet at the trial”.

**27.** As the authors say, at page 230 (n 6), this passage has been repeatedly approved including in *RL v. Her Honour Judge Heneghan* [2015] IECA 120.

**28.** Hogan J. in *Allied Irish Banks Plc v. Pierce* [2015] IECA 87 said that a pleading had to identify in a “pithy and concise statement of the claim.” (para. 16).

**29.** For the purposes of the present appeal the central principle is that the material facts, and not the evidence, should be pleaded.

**30.** The CCR provides no specific rule as to the nature and form of pleadings, and accordingly the practice and procedure governing the High Court is applicable: Order 67 r.16 of the CCR.



**31.** Order 19 r. 3 of the RSC provides:

“Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.”

**32.** The endorsement of jurisdiction, or, more accurately, the endorsement of the basis of jurisdiction, made in a civil bill in the Circuit Court is a pleading or statement that the Court has jurisdiction. Should the plaintiff fail to establish that factual basis at trial, and should a defendant successfully defend the claim on the basis of jurisdiction, the claim will fail.

**33.** The initiating pleading in the Circuit Court, usually a civil bill, performs the same function as a special endorsement of claim in the High Court. The possession civil bill is the form of action in proceedings seeking the recovery of possession of any land on foot of a legal mortgage or charge, and for orders declaring the amount due on foot of a mortgage to be well charged on land. (Circuit Court Rules (Actions for Possession and Well-Charging Relief) 2009 (S.I. No. 264 of 2009)). It is a form of summary process suitable for summary disposition where it is proposed that the claim will be proved on affidavit.

**34.** The basic principle regarding the contents of a special endorsement of claim in summary proceedings was stated by Kingsmill Moore J. in *Bond v Holton* [1959] I.R. 302 (at p. 310-311) that:

“Unless an indorsement on a summary summons states the cause of action or states facts which, if true, unequivocally constitute a cause of action which may be brought by summary summons, it is a bad indorsement.”

**35.** In *Gladney v. Grehan* [2016] IEHC 561 the pleadings were struck out on the grounds that the indorsements were bad.

**Discussion and decision**

**36.** The argument of Mr Langan is firstly based on a proposition that a defendant met with a summary claim has in his words “no obvious right to defend same except by leave of the Court”, and offers no authority for this proposition which must as a matter of first principle be rejected.

**37.** Where a defendant is met with a claim for relief, be it by plenary action or proceedings seeking summary judgment, that defendant is entitled to defend the proceedings, albeit that the mode by which the defence is established may be different. Mr Langan may be somewhat confused by the shorthand language used in summary proceedings, where a defendant must establish a sufficient basis to resist summary judgment before proceedings are remitted to plenary hearing. A claim for judgment either for a liquidated sum, or for possession, is one capable of being made by summary action and a defendant met with such proceedings is entitled to appear and advance an argument that the claim is not one suitable for disposal by summary means, because that defendant has a defence to the claim which is more properly to be dealt with by a full trial. See e.g. the judgment of the Supreme Court in *Bank of Ireland Mortgage Bank v Cody & anor* [2021] IESC 26, [2021] 2 I.R. 381.

**38.** That process is sometimes called “giving liberty to a defendant to defend”, which is merely shorthand for a process by which a defendant has established a sufficient basis on which summary judgment can be denied, and the proceedings must then be determined, and may then be defended, at a plenary action.

**39.** All persons met with a claim by civil bill for summary possession have an entitlement to defend that claim, albeit that the process by which summary possession

is sought by a plaintiff is one intended to simplify and expedite claims where no genuine or stateable defence exists.

**40.** Mr Langan argues in reliance on the Supreme Court decision in *Bank of Ireland Mortgage Bank v O'Malley* with regard to the level of particularity required in a summary pleading, that in the case of summary proceedings a pleader has a specific obligation to establish jurisdiction on the face of a civil bill. But that judgment concerns the facts to be pleaded, and not the manner by which they are to be proved at hearing. It does not detract from the general proposition that the purpose of a pleading is to assert certain facts, not to prove them. Such facts must be proved by affidavit or oral evidence, as the case may be. The pleadings are not evidence.

**41.** The matter of pleading may be somewhat more complicated in the case of a claim for summary possession, in that O. 5 r. 4(3) of the RCC requires a plaintiff to serve with the civil bill the affidavit containing an averment of the facts which the plaintiff tenders in support of its claim. It is the case that in the light of the judgment of the Supreme Court the initial evidence proffered by the first named plaintiff, the only plaintiff at the time these proceedings were commenced, and the original affidavit grounding the proceedings sworn, that the evidence of rateable valuation was hypothetical and insufficient.

**42.** Thus there is no doubt that when these Circuit Court proceedings were issued the six properties of which possession was sought did not have a rateable valuation, and it must be noted that the civil bills did not plead a particular rateable valuation but merely asserted that the rateable valuation did not exceed €253.95. The civil bills did list the affidavits which were proffered to ground the claim, and the exhibits were wrongly said to be PLV certificates. For reasons I have explained above, the actions took a different turn and because the properties were not then valued for rating

purposes, and the exhibit was a letter from Valuation Office which said that the office was unable to issue a certificate, but that, if a building was erected or reconstructed in accordance with the dimensions shown on the deed plan submitted, that the rateable valuation would not exceed €253.95.

**43.** I agree with the proposition advanced by Mr Langan that a court must be satisfied that jurisdiction has been established in the course of an application for summary judgment before it pronounces its order and determines the case. I also agree with him that that the jurisdiction of the Circuit Court cannot be “assumed” and must be established, and this is so especially as the jurisdiction of the Circuit Court is wholly statutory in origin.

**44.** I agree with Mr Langan too, that the letter from the Valuation Office proffered when the matter first came on for hearing in the Circuit Court would probably not have been sufficient to establish jurisdiction, but that is a question I need not answer here as a certificate of rateable valuation has been exhibited in respect of each of the six properties showing that each of them carries a rateable valuation below the Circuit Court limit. The argument advanced by Mr Langan is not relevant to the facts now presenting.

**45.** The next point argued by Mr Langan is that the respondents cannot now introduce new evidence to establish jurisdiction, and this too is incorrect if it is the case, as I consider it to be, that jurisdiction must be established by proof at a hearing not by assertion in a civil bill. In the case of these summary proceedings jurisdiction is established by the exhibits of the certificates of rateable valuation which are not disputed.

**46.** Counsel for the respondents argue that this answer is consistent with my judgment in *Meagher and anor v Woods and anor* [2015] IEHC 464, [2015] 3 I.R. 453,

which was a case concerning the jurisdiction of the Circuit Court and where at para. 56

I said the following:

“The answer to this question is found in the terms of the Act of 1961 itself, which provides that the jurisdiction of the Circuit Court to hear and determine proceedings is limited by the monetary and valuation limits provided in the Act. The fact that the Oireachtas provided that the jurisdiction was one to determine the proceedings reflects in my view an obligation that the jurisdiction be in existence at the date the relevant order is made, in other words the date of the determination of the dispute by the proceedings. Thus the correct date at which the rateable valuation is tested is the date of the order. This is consistent with the judgment of O’Hanlon J. in *Harrington v. Murphy* referred to at 24 ante.”

**47.** That dicta suggests that the time at which jurisdiction is tested is the date the order is made and *ipso facto* the date of hearing and at which the dispute in the proceedings is determined.

**48.** In the light of the principles regarding the nature and purpose of pleadings explained above, I am of the view that the argument of the appellant is based on the false premise that the plea as to rateable valuation is required as a matter of law and fact to be correct as at the date of the issue of the civil bill. In the event, and at hearing in the Circuit Court, the High Court on Circuit, the Court of Appeal and the Supreme Court, the answer has now been unequivocally stated that proceedings for possession may be maintained provided the plaintiff can establish rateable valuation by such evidence as may be appropriate in the given case.

**49.** Here, in both claims, the respondents have established by affidavit evidence which is uncontroverted, that the six properties do have a rateable valuation in each case below the Circuit Court jurisdiction, and that the total of the five of which

possession is sought in a single civil bill, is also less than that amount. Had the respondents not been in a position to establish by suitable evidence the amount of the rateable valuation, or as the case may be, by some other means, that the rateable valuation is less than the Circuit Court jurisdiction, the respondents would then not have properly made out the claim on the evidence adduced at the hearing, and the claim would have failed.

**50.** Thus, because it is the function of pleadings to identify the nature of the claim and not the evidence on which a plaintiff will seek to establish that claim, and because the pleading has as its function the identification of those issues and not the evidence which will be relied upon to establish those facts, the law is not that a plaintiff must at the date of the issue of a civil bill for possession be in a position to establish jurisdiction by means of the production of a certificate of rateable valuation showing jurisdiction.

**51.** The question to be decided is whether the respondents have now established by evidence, and in light of the decision of the Supreme Court, that the Circuit Court did have jurisdiction.

**52.** In my view they have done so.

**53.** In the circumstances and in conclusion, I am satisfied that the proofs are met and that the respondents are entitled to possession of the six premises set out in the indorsement to the two civil bills both dated 12 March 2014.