

APPROVED

[2023] IEHC 662



THE HIGH COURT  
CIRCUIT APPEAL

2023 20 CA

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND) DAC

PLAINTIFF

AND

MATT DOYLE  
MARION DOYLE  
BRIDGET O'CONNELL (DECEASED)

DEFENDANTS

**JUDGMENT of Mr. Justice Garrett Simons delivered on 4 December 2023**

## INTRODUCTION

1. This judgment is delivered in respect of an application for leave to issue execution. The application comes before the High Court by way of an appeal from the Circuit Court. Accordingly, the application falls to be determined by reference to the Circuit Court Rules rather than the Rules of the Superior Courts.

NO REDACTION REQUIRED

The High Court is, in effect, exercising the Circuit Court's statutory jurisdiction rather than its own original jurisdiction.

2. There is a crucial distinction between the rules of the respective courts insofar as execution is concerned. Order 36 of the Circuit Court Rules provides that every decree of the Circuit Court shall be in full force and effect for a period of twelve years and that any execution order must be issued within the said period. Not only is there no comparable provision under the Rules of the Superior Courts, but the thrust of the case law is to the effect that there is no limitation period on the issuance of execution orders by the High Court.
3. The moving party invites the High Court, in determining this appeal, to interpret Order 36 of the Circuit Court Rules in a manner which aligns with the equivalent rule under the Rules of the Superior Courts, i.e. Order 42, and, more generally, with the Statute of Limitations 1957.
4. The moving party is constrained to make these arguments in circumstances where the order for possession, which it is sought to enforce, is more than twelve years old. If, on its proper interpretation, Order 36 of the Circuit Court Rules does, indeed, impose a twelve year time-limit, then the application for leave to issue execution would have to be refused.

## **PROCEDURAL HISTORY**

5. The moving party, Pepper Finance Corporation (Ireland) DAC, seeks to execute an order for possession made by the County Registrar on 10 November 2008 ("*the order for possession*"). The order for possession had originally been granted in favour of Bank of Scotland (Ireland) Ltd. Thereafter, an execution order, in the form of an order of possession, was issued in favour of the original

plaintiff. (As to the distinction between an order for, and an order of, possession, see *Start Mortgages DAC v. Rogers* [2021] IEHC 691 (at paragraphs 24 to 29)).

6. The execution order was issued on 26 March 2010. It seems that the execution order may not have been received from the Circuit Court Office until 8 June 2010. The execution order is directed to the several Sheriffs and County Registrars of the County of Kildare. It authorises the taking of possession of the property comprised in Folio 3969 of the Register County Kildare and the delivery of same to Bank of Scotland (Ireland) Ltd.
7. The execution order has been renewed from time to time. In the initial years, same was renewed in the Circuit Court Office. Thereafter, there were two applications for renewal made to a Judge of the Circuit Court on 1 May 2018 and 29 July 2020, respectively. A court application was deemed necessary in circumstances where there had been a transmission of interest from the original plaintiff, Bank of Scotland (Ireland) Ltd, to Tanager Ltd. The execution order was subsequently renewed in the Office on 26 May 2021. At no point, however, were either the execution order or the order for possession amended so as to reflect the change in the party said to be entitled to execution. (cf. *Crowley v. Ireland* [2022] IEHC 596 (at paragraphs 28 to 39)).
8. Pepper Finance Corporation (Ireland) DAC (“*Pepper Finance*”) issued a motion on 30 September 2022 seeking an order granting it leave to issue execution. The application is made pursuant to Order 36, rule 9 of the Circuit Court Rules. The motion also seeks an order renewing the execution order first issued on 24 March 2010.
9. It is not clear from the papers as to upon what basis Pepper Finance asserts an entitlement to execute the order for possession. It may be that Tanager DAC has

since changed its name to “*Pepper Finance (Ireland) DAC*”, but this has not been explained on affidavit. It is not necessary to consider the implications of this evidential deficit having regard to my findings on the time-limit issue.

10. The motion was refused by the Circuit Court (His Honour Judge O’Sullivan) by order dated 26 January 2023 on the grounds that more than twelve years have expired since the date of the decree or judgment sought to be enforced.
11. Pepper Finance filed an appeal against that order to the High Court. The appeal ultimately came on for hearing before me on 20 November 2023. There was no attendance on behalf of the defendants, but Pepper Finance was in a position to prove service. Pepper Finance was given leave to file and serve short supplemental written submissions following the hearing. Judgment was reserved until today’s date.

#### **ORDER 36, CIRCUIT COURT RULES**

12. Order 36, rule 9 of the Circuit Court Rules provides that every decree or judgment of the Circuit Court shall be in full force and effect for a period of twelve years. An execution order based on a decree or judgment may only be issued within a period of twelve years from the date thereof. If an execution order has not issued within a period of six years, then it is necessary to apply for leave to issue execution from the Circuit Court.
13. Put otherwise, the Circuit Court Rules anticipate that a decree or judgment will ordinarily be executed within six years. This is subject to an outer limit of twelve years. If it is sought to execute between years six and twelve, it is necessary to apply for leave to issue execution.

14. It is also necessary to apply for leave to issue execution in circumstances where, at any time during the period of twelve years, any change has taken place, by death, assignment or otherwise, in the parties entitled or liable to execution. The original decree or judgment may be amended so as to give effect to any order made by the court on the application. (Order 36, rule 10).
15. The twelve year time-limit applies equally to an application to *renew* an execution order. Order 36, rule 13 reads as follows:

“An execution order may, on the application of the party entitled thereto, be renewed in the Office at any time during the currency of the decree or judgment in respect of which it was originally issued for the period of not more than one year from the date of such renewal, provided that the said decree or judgment be in full force and effect for the period for which the said execution order is so renewed. The fact of the renewal of any such order shall be indorsed thereon and the order shall be re-sealed. An order for execution so renewed shall have effect and be entitled to priority according to the time marked thereon as the date of its original issue.”

16. As appears, an execution order may only be renewed “*during the currency of the decree or judgment*” and this is subject to the proviso that the said decree or judgment be in “*full force and effect*” for the period for which the execution order is so renewed.

#### **ORDER 67, CIRCUIT COURT RULES**

17. Counsel on behalf of Pepper Finance submits that the provisions of Order 36 should be read in conjunction with those of Order 67, rule 6. The latter rule provides as follows:

“(1) Subject to sub-rule (2) and to any relevant provision of statute, the Court shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, and may also declare any step taken or act done to be sufficient, upon such terms (if any) as the Court may direct,

and any such enlargement may be ordered or such direction given although the application for same is not made until after the expiration of the time appointed or allowed.

(2) Sub-rule (1) does not apply to any application to which Order 12 applies.”

18. It is a canon of statutory interpretation that except insofar as the contrary intention appears, the general gives way to the specific. This canon is sometimes referred to by the Latin maxim *generalia specialibus non derogant*. Here, the Circuit Court Rules provide, at Order 36, that a decree or judgment shall be in full force and effect for a period of twelve years. This is expressed as a statement of principle. It is not defined by reference to the “*doing of any act*” by a party and is thus not affected by Order 67.
19. The general provisions of Order 67 must yield to the specific provisions of Order 36. A general power to enlarge the time appointed for the “*doing of any act*” cannot be press-ganged into service to prolong the currency of a decree or judgment beyond the twelve years prescribed. Were it otherwise, the object of Order 36 would be defeated. The object is to delimit the effective period of a decree or judgment.
20. Pepper Finance’s submission that Order 67, rule 6 would be rendered “*meaningless*” if not interpreted as allowing for an extension of the time-limit prescribed under Order 36, rule 9 is not well founded. On its proper interpretation, the former rule serves an important purpose in allowing the enlargement or abridgement of time for doing acts, such as, for example, the delivery of pleadings. This purpose is sufficient, in and of itself, to justify the existence of the rule. It is neither necessary nor appropriate to go further and to interpret Order 67 as allowing for the currency of a judgment to be extended beyond twelve years. To do so would involve a departure from the clear and

unambiguous language of the Circuit Court Rules and set at naught the underlying principle of Order 36, namely that a judgment is only in full force and effect for twelve years.

21. Pepper Finance further submits that Order 67, rule 6 is available by dint of the fact that the twelve year period under Order 36 is a *non-statutory* time-limit, citing, by analogy, *Save the South Leinster Way v. An Bord Pleanála* [2023] IEHC 577. With respect, this submission is incorrect. It is a *non sequitur* to suggest that because Order 67, rule 6 is expressly stated to be subject “*to any relevant provision of statute*”, then it must be interpreted as automatically overriding any non-statutory time-limit. Rather, the proper interpretation of the interaction between the two rules is as explained above.

## **DISCUSSION**

### ***(1). Purposive interpretation***

22. Order 36 of the Circuit Court Rules, on its literal interpretation, precludes both the issuance of, and renewal of, an execution order after the expiration of twelve years from the date of the relevant decree or judgment. The judgment which it is sought to enforce in the present case is dated 10 November 2008. On the literal interpretation, it follows that the application for leave to execute must be refused. The twelve-year period had already expired even before the motion was filed on 20 September 2022.
23. Counsel on behalf of Pepper Finance invites the court to depart from the literal wording of Order 36. It is submitted that Order 36 should, instead, be given a purposive interpretation so as to align it with the equivalent rule under the Rules

of the Superior Courts, i.e. Order 42, and more generally with the Statute of Limitations.

24. Before turning to consider the substance of this submission, it is salutary to recall the relevant principles of statutory interpretation. The proper approach to statutory interpretation has recently been restated by the Supreme Court in *Heather Hill Management Company v. An Bord Pleanála* [2022] IESC 43, [2022] 2 I.L.R.M. 313. Murray J., writing for the Supreme Court, emphasised that the literal and purposive approaches to statutory interpretation are not hermetically sealed. In no case can the process of ascertaining the legislative intent be reduced to the reflexive rehearsal of the literal meaning of words, or the determination of the plain meaning of an individual section viewed in isolation from either the text of a statute as a whole or the context in which, and purpose for which, it was enacted. Rather, it is necessary to consider the context of the legislative provision, including the pre-existing relevant legal framework, and the object of the legislation insofar as discernible.
25. The words of the section are the first port of call in its interpretation, and while the court must construe those words having regard to (i) the context of the section and of the Act in which the section appears, (ii) the pre-existing relevant legal framework and (iii) the object of the legislation insofar as discernible, the onus is on those contending that a statutory provision does not have the effect suggested by the plain meaning of the words chosen by the legislature to establish this. The “*context*” that is deployed to that end, and “*object*” so identified, must be clear and specific, and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an



alternative construction that is itself capable of being accommodated within the statutory language.

26. These principles apply *mutatis mutandis* to the interpretation of secondary legislation such as the Circuit Court Rules.
27. It is necessary, therefore, to consider whether the apparently clear language of Order 36 must be given a *different* meaning so as to reflect the context and object of the Circuit Court Rules.
28. Counsel for Pepper Finance submits that Order 36 has to be interpreted by reference to the Statute of Limitations. This legislation, it is said, represents the proper context for the interpretative exercise. It is submitted that, in circumstances where the Statute of Limitations does not impose a time-limit on the issuance of an execution order, the Circuit Court Rules should not be interpreted as unilaterally imposing such a time-limit.
29. Counsel submits, correctly insofar as it goes, that the case law in respect of Order 42 of the Rules of the Superior Courts indicates that the prevailing view, at the level of the High Court, is that the taking of procedural steps to execute a judgment is not subject to a limitation period.
30. To elaborate: Section 11(6)(a) of the Statute of Limitations provides that an action shall not be brought upon a judgment after the expiration of twelve years from the date on which the judgment became enforceable. The term “*action*” is defined under the Statute of Limitations as including any proceeding (other than a criminal proceeding) in a court established by law. In *Start Mortgages DAC v. Piggott* [2020] IEHC 293, the High Court (Gearty J.) held that the renewal of an order of possession did not constitute an action upon a judgment. This approach has since been approved of by the High Court (Allen J.) in *Irish Nationwide*

*Building Society v. Heagney* [2022] IEHC 12. The question remains open, however, at the appellate level: *Smyth v. Tunney* [2004] IESC 24, [2004] 1 I.R. 512.

31. The gravamen of Pepper Finance's argument is that the Circuit Court Rules Committee cannot have intended to impose more onerous conditions on the execution of judgments than those already imposed by the pre-existing relevant legal framework. On this argument, Order 36 should not be interpreted as imposing an absolute time-limit in circumstances where the Statute of Limitations does not delimit the period within which a judgment may be executed.
32. With respect, there are two fundamental difficulties with this argument. The first difficulty is that the language of the Circuit Court Rules is incapable of accommodating an interpretation which allows an execution order to be issued or renewed after the expiration of twelve years. The principle that a decree or judgment is only effective for a period of twelve years is stated, directly or indirectly, at several points throughout Order 36. There is no alternative interpretation available without doing violence to the legislative language. Whereas the purposive approach to interpretation does allow the court to depart, on occasion, from the ordinary meaning of legislation, it does not allow the court to rewrite the legislation.
33. The second difficulty is that there is no cogent basis for the assumption that the Rules Committee cannot have intended to impose a twelve year time-limit in the absence of there being an equivalent limitation period under the Statute of Limitations. Even in the context of the differently worded provisions of the Rules of the Superior Courts, the fact that twelve years have elapsed since the

date of the judgment to be executed is regarded as a “*major factor*” to be considered in deciding whether to grant or refuse leave to execute. As explained in the majority judgment of the Court of Appeal in *Cabot Financial (Ireland) Ltd v. Joyce* [2023] IECA 281 (at paragraphs 76 to 78), the equivalent rule under the Rules of the Superior Courts fulfils twin objectives as follows. The first objective is that there should be some expedition in the execution of judgments. A generous period (six years) is allowed during which the party seeking to enforce the judgment may obtain an execution order from the office, i.e. without any necessity to apply to court. The second objective is to ensure, in the public interest, that creditors are not deterred from engaging positively with judgment debtors for fear that they may be precluded thereafter from enforcing their judgment in the event that the engagement does not bear fruit.

34. The majority judgment goes on to reiterate the statement in *Smyth v. Tunney* (cited above) to the effect that even if an application for leave to issue execution is not an “*action*” upon a judgment within the meaning of the Statute of Limitations, the fact that the statutory period has run must surely be a “*major factor*” to be considered by a court in considering whether to grant or refuse leave as a matter of discretion.
35. Against this background, it cannot be said that a rule of court which precludes the issuance of an execution order after the expiration of twelve years from the date of the decree or judgment fails to reflect the “*purpose*” or “*object*” underlying the rule.
36. It is not for the court to assess the policy behind any legislation even if there might be grounds for believing that the legislation may be ill-suited to achieving its ends. Rather, the court could only set aside the clear and unambiguous

interpretation of Order 36 if it were satisfied that there is no possible or conceivable basis upon which the Rules Committee might have chosen to legislate in the manner which a literal construction of the relevant provisions would require. See, by analogy, *Irish Life & Permanent plc v. Dunne* [2015] IESC 46, [2016] 1 I.R. 92. For the reasons explained, this threshold is not met.

37. For completeness, the correctness of this analysis is not put in doubt by reference to the judgment of the High Court (Gearty J.) in *Start Mortgages DAC v. Piggott* [2020] IEHC 293. That judgment was concerned with the interpretation of Order 42 of the Rules of the Superior Courts. The observations, at paragraph 5.2 of the judgment, in respect of the Circuit Court Rules are accordingly *obiter dicta*.
38. In summary, the fact, if fact it be, that the Statute of Limitations does not delimit the period within which a decree or judgment may be executed does not affect the interpretation of Order 36 of the Circuit Court Rules. There is no doubt as to the intent of the Rules Committee in adopting Order 36. It is a separate question as to whether Order 36 might be *ultra vires*. The validity of the rule cannot be challenged in these proceedings: see paragraphs 46 to 49 below.

**(2). Order 36, rule 9**

39. Pepper Finance makes a subsidiary argument based on the grammatical structure of Order 36, rule 9. That rule reads as follows:

“Every decree of the Court, and every judgment in default of appearance or defence, shall be in full force and effect for a period of twelve years from the date thereof, and an execution order based on any such decree or judgment may be issued in the Office within the said period, but not after the expiration of six years from the date of such decree or judgment without leave of the Court. An application for such

leave shall be made by motion on notice to the party sought to be made liable.”

40. On Pepper Finance’s argument, the subclause “*but not after the expiration of six years from the date of such decree or judgment without leave of the Court*” should be read disjunctively. On this argument, the outer limit of twelve years only obtains where it is sought to issue an execution order in the Circuit Court Office. If, conversely, an application is made to a Judge of the Circuit Court for leave to issue execution, there is said to be no outer time-limit.
41. With respect, the contended for interpretation does violence to the statutory language. The rule commences by stating that every decree or judgment shall be in full force and effect for a period of twelve years from the date thereof. It then prescribes the time period within which an execution order may be issued: an execution order may be issued “*within the said period*”, i.e. a period of twelve years from the date of the decree or judgment. This is subject to a leave requirement after the expiration of six years from the date of the decree or judgment. The words “*but not after*” forge a direct link between the two subclauses. An execution order is always issued in the Office: the distinction between the first and second six years of the twelve year period being that the leave of the Circuit Court is required before the Office can issue an execution order after the expiration of six years.

**(3). Courts (Supplemental Provisions) Act 1961**

42. The next argument advanced on behalf of Pepper Finance is predicated on Section 22(6) of the Courts (Supplemental Provisions) Act 1961. This subsection provides as follows:

“The Circuit Court, as regards any cause of action for the time being within its jurisdiction, shall in any proceedings before it—

- (a) grant such relief, redress or remedy or combination of remedies, absolute or conditional, and
- (b) give such and the like effect to every ground of defence or counterclaim, legal or equitable,

as ought to be granted or given in the like case by the High Court and in as full and ample a manner.”

43. Counsel on behalf of Pepper Finance submits that this indicates that, in cases of concurrent jurisdiction, the Circuit Court exercises a jurisdiction equivalent to that of the High Court in all respects, including, relevantly, in relation to the execution of judgments and orders.
44. This submission is not well founded. It is apparent from the wording of Section 22(6) that it is concerned with the *substance* of the remedy which may be granted by the Circuit Court. The Circuit Court can grant the same type of relief, redress or remedy as can the High Court. Thus the Circuit Court can, in an appropriate case, grant an order for possession. The section does not go further and prescribe that the procedural requirements in relation to the execution of judgments and orders must be equivalent.
45. Even if the submission predicated on Section 22(6) were correct, it would not avail Pepper Finance in this application. The logical terminus of the submission, if correct, is that Order 36 of the Circuit Court Rules is *ultra vires*. For the reasons explained under the next heading, no challenge to the validity of the Rules can be raised in the context of the present application.

***(4). No challenge to validity of Circuit Court Rules***

46. In addition to its submissions on the proper interpretation of Order 36, Pepper Finance makes a more general complaint to the effect that the imposition of a twelve year time-limit is *ultra vires*. The complaint is summarised as follows in the written legal submissions of 20 November 2023:

“If the effect of Order 36, rule 9 is to impose a temporal limitation of 12 years on the execution of an order of the Circuit Court, that would amount to the imposition of a restriction on a statutory entitlement. It would, in effect, amount to a purported amendment of the general law by the Circuit Court Rules Committee, and would be *ultra vires* the power of the committee. No such restriction can lawfully or fairly be applied so as to deprive the Plaintiffs of the right to execute the orders for possession in this case.”

47. With respect, no challenge to the validity of the Circuit Court Rules can be raised in the context of the present application. This is because the High Court, in determining this appeal, is exercising the statutory jurisdiction of the Circuit Court rather than its own original jurisdiction. Just as the Circuit Court could not strike down the Circuit Court Rules, neither can the High Court in the exercise of its appellate jurisdiction.
48. If there is to be a challenge to the validity of Order 36, same could only be brought by way of judicial review proceedings which engage the High Court’s original jurisdiction. The proper respondents to any such challenge would include the Rules Committee and the Minister for Justice.
49. The Supreme Court in *Shell E & P Ireland Ltd v. McGrath* [2013] IESC 1, [2013] 1 I.R. 247 (at paragraphs 57 and 58) reiterated that rules of court have, unless declared invalid, the force of law. The court must proceed, therefore, on the basis that the rules in relation to execution orders are a valid exercise of the power delegated to the rule-making authorities by the Oireachtas. See also *Director of Public Prosecutions v. Davitt* [2023] IESC 17 (at paragraph 122).

## **CONCLUSION AND FORM OF ORDER**

50. Order 36 of the Circuit Court Rules precludes both the issuance of, and renewal of, an execution order after the expiration of twelve years from the date of the

relevant decree or judgment. The judgment which it is sought to enforce in the present case is dated 10 November 2008. It follows that the application for leave to execute must be refused. The twelve year period had already expired even before the motion was filed on 20 September 2022.

51. No order for costs will be made in circumstances where there was no attendance on behalf of the defendants and they cannot, therefore, have incurred any recoverable costs.

*Appearances*

Rudi Neuman for the plaintiff instructed by AMOSS LLP  
No attendance on behalf of the defendants

Approved  
GAMMA S.M.A.S