APPROVED **[2024] IEHC 138**

THE HIGH COURT

2022 967 P

BETWEEN

NOEL MORAN
TRADING AS NOEL MORAN RECOVERY

PLAINTIFF

AND

BLACK STAR MANAGEMENT LTD
TRADING AS THE RECOVERY NETWORK

DEFENDANT

JUDGMENT of Mr. Justice Garrett Simons delivered on 20 March 2024

INTRODUCTION

1. This judgment is delivered in respect of an application to remit these proceedings to the Circuit Court. The application is made pursuant to Order 49, rule 7 of the Rules of the Superior Courts which, in turn, gives effect to Section 25 of the Courts of Justice Act 1924.

2. The principal dispute between the parties on this application is whether the quantum of damages which the plaintiff is reasonably likely to recover, if successful in his underlying claim, would be in excess of the Circuit Court's monetary jurisdiction of €75,000.

PRINCIPLES GOVERNING APPLICATION TO REMIT

3. The remittal of proceedings from the High Court to the Circuit Court is governed principally by two statutory provisions: (i) Section 25 of the Courts of Justice Act 1924, and (ii) Section 11(2) of the Courts of Justice Act 1936.

4. Section 25 of the Courts of Justice Act 1924 provides as follows:

> "When any action shall be pending in the High Court which might have been commenced in the Circuit Court, any party to such action may, at any time before service of notice of trial therein, apply to the High Court that the action be remitted or transferred to the Circuit Court, and thereupon, in case the court shall consider that the action is fit to be prosecuted in the High Court, it may retain such action therein, or if it shall not consider the action fit to be prosecuted in the High Court it may remit or transfer such action to the Circuit Court or (where the action might have been commenced in the District Court) the District Court, to be prosecuted before the Judge assigned to such Circuit or (as the case may require) the Justice assigned to such District, as may appear to the High Court suitable and convenient, upon such terms, in either case and subject to such conditions, as to costs or otherwise as may appear to be just:
>
> Provided that the High Court shall have jurisdiction to remit or transfer any action, whatever may be the amount of the claim formally made therein, if the court shall be of opinion that the action should not have been commenced in the High Court but in the Circuit Court or in the District Court if at all."

5. The legal test governing the High Court's discretion to remit proceedings has been modified somewhat by Section 11(2) of the Courts of Justice Act 1936 as follows:

> "Notwithstanding anything contained in section 25 of the Principal Act the following provisions shall have effect in relation to the remittal or transfer of actions under that section, that is to say: —
>
> (a) an action shall not be remitted or transferred under the said section if the High Court is satisfied that, having regard to all the circumstances, and

> notwithstanding that such action could have been commenced in the Circuit Court, it was reasonable that such action should have been commenced in the High Court;
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> (b) an action for the recovery of a liquidated sum shall not be remitted or transferred under the said section unless the plaintiff consents thereto or the defendant either satisfies the High Court that he has a good defence to such action or some part thereof or discloses facts which, in the opinion of the High Court, are sufficient to entitle him to defend such action."

6. As appears, the High Court in deciding whether to remit proceedings to the Circuit Court must consider whether it was "*reasonable*" to have commenced the action in the High Court. This wording was examined in *O'Shea v. Mallow Urban District Council* [1994] 2 I.R. 117. The defendant in that case had sought to argue that it is implicit in the making of an order for remittal that it had been *unreasonable* to commence the action in the High Court, and that it followed, as a corollary, that no award in excess of the Circuit Court's jurisdiction could be made in the proceedings.

7. The High Court (Morris J.) rejected this argument, citing the provisions of Section 20 of the Courts of Justice Act 1936. The current version of that section provides that where an action claiming unliquidated damages is remitted or transferred by the High Court to the Circuit Court, the Circuit Court shall have jurisdiction to award damages in excess of €75,000.

8. The interpretation of Section 11(2) of the Courts of Justice Act 1936 has been considered most recently by the Court of Appeal in *Allied Irish Banks plc v. Gannon* [2017] IECA 291, [2018] 2 I.R. 239. Hogan J. (delivering the unanimous judgment of the Court of Appeal) referred to the two leading authorities on the interpretation of the section, *Stokes v. Milford Co-Operative*

Creamery Ltd (1956) 90 I.L.T.R. 67, and *O'Shea v. Mallow Urban District Council* (above). Hogan J. then summarised the factors which might be taken into account in deciding whether it was "*reasonable*" to commence proceedings in the High Court as follows (at paragraph 26 of the reported judgment):

> "There may well be cases where for any number of reasons it was reasonable to commence the proceedings in the High Court in the sense contemplated by the subsection. Thus, for example, the proceedings may be linked or otherwise bound up with existing High Court proceedings or where all the witnesses were based in Dublin where the alternative was a Circuit Court hearing at a rural venue or where the case raised an unusually important point of law suitable for adjudication by the High Court. Depending, of course, on the facts of the particular case, these examples might well amount to instances where the High Court might be satisfied within the meaning of s. 11(2)(a) of the 1936 Act that it was reasonable to commence the proceedings in that forum."

9. Absent such considerations, the contest on most applications for remittal will centre on the quantum of damages. It appears that the test to be applied is an objective one: the High Court must ask whether an award of damages in excess of the Circuit Court's monetary jurisdiction would be unreasonable or excessive. This test had originally been formulated in the context of a claim in tort and in the context of a legislative regime where damages fell to be assessed by a jury rather than a judge: *O'Connor v. O'Brien* [1925] 2 I.R. 24. This is reflected in the terms in which the test is expressed:

> "The plaintiff's statement of his case (unless unequivocally displaced) must be accepted for this purpose, and the question must resolve itself into this:— Has the plaintiff stated (upon the affidavits opposing an application to transfer the action) a case upon which a jury could reasonably give him a verdict for a sum exceeding the Circuit Court's monetary jurisdiction. […]".

10. This test has been reiterated by the Supreme Court in *Ronayne v. Ronayne* [1970] I.R. 15. There, the Supreme Court explained that this test continued to

apply notwithstanding that—as the result of a subsequent legislative amendment—the Circuit Court now has unrestricted jurisdiction as to the amount of damages which may be awarded in a remitted action.

11. The test applies in slightly modified form in cases, such as the present, where the action is founded on an alleged breach of contract rather than on tort. The assessment of damages is less subjective in such actions than it is in, say for example, a personal injuries action, and the need to show deference to the verdict of a jury does not arise. The judge hearing the application to remit should consider whether the range of damages which might *reasonably* be awarded by the court of trial straddles the Circuit Court's monetary jurisdiction of €75,000.

12. The test has been most recently addressed by the High Court (Roberts J.) in *Farrelly v. Pepper Finance Corporation* [2023] IEHC 92. The test was described as follows (at paragraph 18):

> "In relation to claims for unliquidated damages, such as the present case, it is well established that the primary test to be applied by this Court on an application to remit is to consider whether the proceedings could have been commenced in the lower court and whether the relief claimed is within the jurisdictional limits of that lower court. The current jurisdictional limits for claims brought in the Circuit Court is €75,000 in respect of non-personal injury claims and €60,000 in respect of personal injury claims. In considering whether the relief claimed is within the jurisdictional limits of the Circuit Court I must determine this application not on the basis of what damages I believe will probably be awarded but rather on the basis of the maximum damages that could reasonably be awarded to the plaintiff taking her claims at their height."

13. The fact that the plaintiff has sought damages in excess of the Circuit Court's monetary jurisdiction is not determinative. Rather, the court hearing the application to remit is entitled to make some limited assessment of the value of the plaintiff's claim. This is apparent, in particular, from the judgment in

Ronayne v. Ronayne where the members of the Supreme Court took the step of viewing the scarring, the subject-matter of the personal injuries action in those proceedings, for the purpose of evaluating the reasonable range of damages. Of course, an application to remit should not be elevated to a dress rehearsal of the trial of the action. It is a summary application which is heard and determined on affidavit evidence. Within these confines, however, the court hearing the application to remit is entitled to consider whether there is a credible basis for a particular head of damages. The concept of a "*credible basis*" for a party's case is one which is deployed in the context of other interlocutory applications, such as, for example, an application for leave to defend or an application to dismiss proceedings as frivolous and vexatious. The concept can usefully be applied, by analogy, in the context of an application to remit. This is especially so in the present case where the claim for an award of damages in excess of the Circuit Court's monetary threshold is predicated on a net issue of contractual law rather than a disputed issue of fact.

14. In summary, the High Court, in determining an application to remit, should consider whether the range of damages which might *reasonably* be awarded by the court of trial straddles the Circuit Court's monetary jurisdiction of €75,000. This exercise should be carried out having regard to all of the circumstances of the case, including the affidavit evidence adduced on the application for remittal. Insofar as there are irreconcilable conflicts of fact, the plaintiff's case should be taken at its height. The High Court is nevertheless entitled to make some limited assessment of the plaintiff's claim. If there is no credible basis for a particular head of damages, this is something which may be taken into account.

FACTUAL BACKGROUND

15. The within proceedings have their genesis in the breakdown of a contractual relationship between the parties. The parties had entered into a written agreement on 11 May 2015. The plaintiff agreed to provide services consisting of, *inter alia*, the towage and storage of vehicles at the request of An Garda Síochána. These services were to be provided by the plaintiff as subcontractor to the defendant who held the contract with An Garda Síochána.

16. The agreement had been for an initial period of 12 months, but this was subject to annual extensions. Both parties accept that the agreement had been in force as of the date of the relevant events of December 2020 (discussed below). In particular, neither party is relying on the wording of clause 5 which suggests that the annual extensions were subject to an outer limit of 36 months.

17. The terms and conditions are set out at Schedule A of the agreement. There are a number of clauses which are potentially relevant in assessing the quantum of damages as follows. Clause 10 A provides that the agreement may be terminated by either party serving one month's written notice to the other party. The fact that the agreement is terminable *without cause* on one month's notice restricts the amount of damages which might be recovered. Clause 10 D provides that termination of the agreement shall not affect any provision of same which is expressly or by implication intended to come into or continue in force on or after such termination. Clause 16 is an "*entire agreement*" clause.

18. Schedule D of the agreement sets out the fees to be charged by the plaintiff *qua* sub-contractor to the defendant *qua* contractor. The initial fee for the storage of a vehicle is €5.69 per day for storage for up to twenty-one days. Long-term storage is charged at €162.60 per quarter.

19. A different set of fees is payable by members of the public. The storage fee is €35 per day, with the first 24 hours being free of charge. These fees were prescribed by An Garda Síochána. These fees were to be collected by the plaintiff and remitted to the defendant on behalf of An Garda Síochána. Having regard to the nature of the claim advanced by the plaintiff, it is appropriate to pause here and emphasise that the fees payable under the agreement to the plaintiff were considerably less than those which the owner of a seized vehicle would have to pay over for the benefit of An Garda Síochána. In the case of short-term storage, the difference involved a factor of six: the vehicle owner was liable to pay €35 per day, whereas the plaintiff would only receive €5.69.

20. The defendant purported to serve notice of termination of the agreement on 21 December 2020. As of that date, there were approximately 30 vehicles in storage at the plaintiff's premises. These included a number of larger vehicles, such as trucks, and a fishing trawler.

21. It appears from an email of 22 December 2020 that the plaintiff purported, unilaterally, to increase the rates payable to him by the defendant in respect of these 30 vehicles. By email dated 23 December 2020, the defendant indicated that it would be willing to pay the full long-term storage rates on all seized vehicles for the (then) current quarter, 1 November 2020 to 31 January 2021 on the basis that the parties would "*work together*" to have the vehicles removed within this timeframe. The email went on to state that the defendant would not be accepting daily storage rates of €35 plus VAT and €50 plus VAT.

22. By email dated 15 January 2021, the plaintiff wrote as follows:

> "As your termination letter was completely unfounded and untrue, my solicitor is waiting on some more correspondence back from Mayo Garda stations, as well as general public specified in your letter.

> In case you have not reliased (*sic*), we are in the middle of pandemic with restrictions in place. If you can prove that removal of your vehicles comes under 'essential' work, I will make provisions for the removal of vehicles. The invoice sent yesterday is due for payment today and must be paid immediately, €25,246.65.
>
> Also whatever operator comes to collect vehicles I will be requesting Full public liability insurance details and copy of haulage/operators licence, especially where trawler is concerned as its a very dangerous load to move."

23. The parties appear to have been stuck in an impasse thereafter.

THE PRESENT PROCEEDINGS

24. The plaintiff instituted the within proceedings on 10 March 2022. The plaintiff claims damages for breach of contract, wrongful termination of contract, breach of collateral contract, and misrepresentation. The principal relief sought is an award of damages in an amount of €263,073.04. This amount is claimed in respect of fees which the plaintiff says he is entitled to be paid in relation to the storage of vehicles post-termination of the agreement. The amount has been calculated by attributing a daily fee of €35 or €50 to each vehicle and multiplying that fee by the number of days the particular vehicle remained on the plaintiff's premises. On the plaintiff's theory of the case, additional fees continued to accrue, on a daily basis, in respect of a handful of vehicles which remained on the premises for up to three years post-termination.

25. Despite having been requested to do so by way of a notice for particulars, the plaintiff had steadfastly refused to provide any detailed breakdown as to how precisely the sum of €263,073.04 has been calculated. The plaintiff was given liberty to provide these details post the hearing of the application to remit. A

spreadsheet has since been provided on 19 March 2024 which indicates the amount claimed in respect of each vehicle. The outlandish nature of the claim can be illustrated by the following example: the plaintiff is contending that he is entitled to a sum of €31,465 for the storage of a 2010 registered vehicle for a period of 899 days post-termination. Not only is this fee wildly in excess of the agreed contractual rate, the court is also entitled to take judicial notice of the fact that the supposed storage fee would greatly exceed the value of the vehicle.

26. The defendant contends that the plaintiff is not entitled to any monies for storage services. The essence of the defence is that the plaintiff retained and refused to release the vehicles which he had collected pursuant to the agreement and then attempted to utilise extortionate storage charges to exert leverage upon the defendant.

27. It is pleaded that the plaintiff failed and/or refused to cooperate and engage with the defendant in order to facilitate the removal of vehicles from the plaintiff's premises. The defendant has delivered a counterclaim. It is alleged, *inter alia*, that the plaintiff wrongfully retained possession and failed to return vehicles subsequent to the termination of the agreement between the parties. It is pleaded that this amounted to trespass and/or conversion. It is also alleged that the plaintiff has failed and refused to remit a sum of €13,715 to the defendant notwithstanding demands in that regard.

28. For the reasons which follow, I have concluded that the range of damages which might *reasonably* be awarded by the court of trial does not exceed the Circuit Court's monetary jurisdiction of €75,000.

29. First, if and insofar as the plaintiff is entitled to any damages in respect of the storage of vehicles post-termination of the agreement, such damages are likely

to be calculated by reference to a daily rate closer to that specified under the agreement, i.e. €5.69 per day for short-term storage and €162.60 per quarter for long-term storage. The damages would be calculated either (i) by reference to the rates payable to the plaintiff *qua* subcontractor under the agreement (on the basis that such terms survive by virtue of clause 10 D), or (ii) on a quantum meruit basis by reference to the commercial or wholesale rates charged for the storage of vehicles.

30. There is no credible basis for the suggestion that the daily rate should be €35 or €50. This is the amount payable to An Garda Síochána by the owner of a vehicle which has been seized for various reasons, such as, for example, the lack of insurance. This gross amount, presumably, includes an element for overhead and administrative costs incurred by the defendant and/or An Garda Síochána, over and above the net cost of storage payable to the plaintiff. This gross amount is not intended to reflect the going commercial rate for the storage of vehicles. The plaintiff had only ever been entitled to receive the rates as agreed, i.e. €5.69 per day for short-term storage and €162.60 per quarter for long-term storage, and there is no credible basis for saying that he is suddenly entitled to a multiple of those rates.

31. Secondly, the court of trial, in assessing damages, would have regard to the principle that a plaintiff is expected to take reasonable measures to mitigate his losses. Here, the plaintiff is asserting an entitlement, some three years post-termination of the agreement, to continue to charge storage fees in respect of vehicles. With respect, no credible basis has been advanced for such an outlandish claim. This is especially so where the agreement was terminable, without cause, on the giving of one month's notice. The court of trial is likely

to find that the plaintiff should have co-operated with the defendant in having the remaining vehicles removed from his premises in the months immediately following the termination of the agreement on 20 December 2020.

CONCLUSION AND PROPOSED FORM OF ORDER

32. In the absence of any argument that the proceedings give rise to the type of factors identified by the Court of Appeal in *Allied Irish Banks plc v. Gannon* [2017] IECA 291, [2018] 2 I.R. 239, the application to remit falls to be determined by reference to the monetary value of the claim. For the reasons explained, the range of damages which might *reasonably* be awarded by the court of trial does not exceed the Circuit Court's monetary jurisdiction of €75,000. Accordingly, an order will be made remitting the proceedings to the Circuit Court.

33. It should be emphasised that the *provisional* view expressed in this judgment as to the likely value of the claim is not binding on the Circuit Court as the court of trial (*O'Shea v. Mallow Urban District Council* [1994] 2 I.R. 117). It is ultimately a matter for the Circuit Court, as the court of trial, having heard oral evidence and full argument, to determine the extent of the damages, if any, to which the plaintiff might be entitled. By virtue of Section 20 of the Courts of Justice Act 1936, where an action claiming unliquidated damages is remitted or transferred by the High Court to the Circuit Court, the Circuit Court shall have jurisdiction to award damages in excess of €75,000.

34. The High Court is required, under Section 24 of the Courts of Justice Act 1924, to remit the action to a particular circuit. Here, the parties are in disagreement

as to whether the action should be remitted to the venue where (i) the defendant company carries on business, or (ii) the contract was made.

35. Order 2 of the Circuit Court Rules provides, in relevant part, as follows:

> "Save when the High Court, or the Court, otherwise orders, all actions, causes or matters, whether transferred from the High Court, or originated in the Court, shall be tried and heard:—
>
> […]
>
> (e) at the election of the plaintiff, in any action founded on contract (whether the claim be to enforce, rescind, dissolve or annul the contract, or for damages or other relief for the breach thereof), in the County where the defendant, or any one of the defendants, ordinarily resides or carries on any profession, business or occupation or in the County within which the contract was made;"

36. Here, the plaintiff elects to have the proceedings remitted to the Western Circuit. This is the venue in which the contract was made: the written agreement was signed in County Mayo and the services, i.e. the towing and storage of vehicles, were to be carried out in Mayo. I am satisfied that this represents the appropriate venue: the relevant witnesses are likely to be located there. Accordingly, the proceedings will be remitted to the Western Circuit, County Mayo.

37. Turning next to the question of legal costs, the High Court enjoys a broad discretion under Section 25 of the Courts of Justice Act 1924 to direct that the remittal be subject to such conditions as to costs as may appear to be just. This jurisdiction is now supplemented by Section 168 of the Legal Services Regulation Act 2015 which provides, relevantly, that a court may order that a party pay the costs of another party *at any stage* in the proceedings. The High Court (Hyland J.) held in *Goulding v. Governor of Mountjoy Prison*

[2021] IEHC 393 that this provision enabled the High Court to allocate the costs to date of proceedings which were to be remitted to a lower court.

38. The usual order is that the costs of the High Court stage of the proceedings are reserved to the trial judge, i.e. the Circuit Court. If, however, the High Court concludes that it was not "*reasonable*" for a plaintiff to have commenced the proceedings in the High Court, it can direct that any costs order ultimately made in the plaintiff's favour is to be confined to costs at the Circuit Court scale (*Parkborough Ltd v. Kelly* [2008] IEHC 401).

39. My *provisional* view is that, in circumstances where the amount claimed in respect of storage post-termination is outlandish, it was not reasonable for the plaintiff to have commenced these proceedings in the High Court. Accordingly, I propose to make an order reserving the costs of the High Court stage of the proceedings to the Circuit Court, subject to the proviso that if and insofar as those costs are ultimately awarded to the plaintiff same are confined to the Circuit Court scale. This is without prejudice to the entitlement of the defendant to make an application for a differential costs order under Section 17 of the Courts Act 1981 (as amended). As to the legal costs of the motion, my *provisional* view is that same should be awarded to the defendant on the basis that it has been entirely successful in its application to remit. If either party wishes to contend for a different form of costs order than that proposed, they should contact the registrar within seven days and arrange to have this matter relisted before me on Thursday 11 April 2024 at 10.30 am.

Appearances

Mark Ryan for the plaintiff instructed by Michael Moran Solicitors LLP
Paul W. Hutchinson for the defendant instructed by M.W. Keller & Son Solicitors LLP

Approved Garrett Simons