THE SUPREME COURT

Appeal No: S:AP:IE: 2015:000049
Court of Appeal Record No.: 000818/2014
High Court Record No.: 2012/742JR

BETWEEN:

OWEN V. McGINTY

Appellant

-and-

THE LABOUR COURT

Respondent

-and-

GALWAY MAYO INSTITUTE OF TECHNOLOGY

Notice Party

RESPONDENT'S NOTICE

LODGED BY NOTICE PARTY

Date of Filing: 28 August 2015

Name of Respondent: Labour Court

The Labour Court has not participated in the proceedings to date and the Notice Party has been responding to the proceedings instituted by the Appellant.

Name of Notice Party: Galway Mayo Institute of Technology

Notice Party's Solicitors: Arthur Cox, Earlsfort Centre, Earlsfort Terrace, Dublin 2

Name of Appellant: Mr Owen McGinty

Name of Appellant's Solicitors: None. The Appellant is a litigant in person.

1. **Notice Party's details**

1.1 Notice Party's full name: Galway Mayo Institute of Technology

1.2 The Notice Party was served with the Application for Leave to Appeal and Notice of Appeal on 21st August 2015.

1.3 The Notice Party intends to (a) oppose the Application for Leave to Appeal and (b) request the Supreme Court to dismiss the Appeal.

1.4 Details of the Notice Party's representation:

(a) The Notice Party's representatives would prefer if the Office of the Supreme Court would communicate with it by electronic mail.

(b) Solicitor for the Notice Party and her contact details are as follows:

Zelda Cunningham

Arthur Cox

Earlsfort Centre

Earlsfort Terrace

Dublin 2

DX 27 DUBLIN

E-mail: Zelda.cunningham@arthurcox.com

Tel: (01) 618 0617

(c) Counsel for the Notice Party and their contact details are as follows:

Tom Mallon B.L.

Law Library

Four Courts

Dublin 7

E-mail: TMallon@lawlibrary.ie

Tel: (01) 817 4564

2. **Notice Party's reasons for opposing extension of time**

Not applicable.

3. **Information about the decision that it is sought to appeal**

3.1 The Appellant is seeking leave to appeal an order of the Court of Appeal affirming the decision of the President of the High Court to refuse his application for judicial review. The Appellant had sought Judicial Review of a decision made by the Respondent, the Labour Court, to refuse to hear the Appellant's appeal of a decision of an Equality Officer on the basis that his appeal was submitted to the Labour Court outside the statutory time period for submitting such an appeal.

3.2 The material background to the decisions of the High Court and the Court of Appeal is as follows. The Appellant in the within proceedings brought a complaint, pursuant to the Employment Equality Acts 1998-2011 to the Equality Tribunal that he had been discriminated against by the Notice Party on the basis of his age. Following a hearing which concluded on the 13th December 2011, the Equality Officer assigned to hear this case issued her Decision on the 28th March 2012, finding against the Appellant.

3.3 The Appellant sought to appeal this decision and lodged his appeal with the Labour Court on the 9th May 2012. The Respondent corresponded with the Appellant on 14th May 2012, advising the Appellant that his appeal was not received within the timeframe prescribed by the Act, as such was out of the time and thus the Respondent could not hear his appeal.

3.4 The Appellant sought and was granted leave to seek Judicial Review of the decision of the Labour Court, declining to hear the appeal from the Decision of an Equality Officer on the basis that the appeal was lodged outside of the statutory timeframe set down in Section 83 of the Employment Equality Acts 1998 to 2011 and as such was statute barred. The Appellant did not elaborate on this any further; however, it was

assumed by the Notice Party that the Appellant sought an order of *certiorari* and /or *mandamus,* quashing the decision of the Labour Court in refusing to hear his appeal.

3.5 The Appellant's Judicial Review application was heard by the President of the High Court, Mr Justice Kearns, on 22nd March 2013, who refused the relief sought and made an Order of costs in favour of the Notice Party. In his submissions to the High Court, the Appellant stated that his application to the Labour Court seeking to appeal the decision of the Equality Tribunal should not have been dismissed as Section 83 (1) of the Employment Equality Acts 1998-2011 provides that such appeals should be submitted to the Labour Court "*...not later than 42 days from the date of the decision of the Director...*", and that the date of the decision of the Equality Officer should not be taken into account when calculating the statutory time period.

3.6 In his judgment of 30th March 2013, the President of the High Court referred to Section 18, subsection (h) of the Interpretation Act 2005 which states:

> *"Where a period of time is expressed to begin on or to be reckoned from a particular day, that day shall be deemed to be included in the period and where the period of time is expressed to end on or be reckoned to a particular day, that day shall be deemed to be included in the period."*

3.7 It was held that Section 18 (h) of the Interpretation Act 2005 makes it abundantly clear what the legislature intended. The President of the High Court held that the Employment Equality Acts 1998-2011 enjoys a presumption of constitutionality and it could not be clearer in terms of what it provides in relation to the time limit for bringing an appeal. In such circumstances, it was held that it was not open to the High Court to go behind the section or to have regard to principles of construction which might convey a different meaning when such an express exposition of the meaning is provided for the section itself.

3.8 The Appellant then appealed to the Court of Appeal. The case was heard by the President of the Court of Appeal, Mr Justice Sean Ryan, Ms Justice Irving and Mr Justice McMahon on 22nd July 2015. The Court of Appeal considered fully the submissions of the Appellant, and unanimously dismissed the Appellant's appeal and upheld the decision of the High Court.

4. Notice Party's Reasons for opposing leave to appeal

4.1 The substantive grounds set out by the Appellant in the Application for Leave to Appeal are entirely new and were not raised by the Appellant in either the High Court

or on appeal in the Court of Appeal. In particular, the Appellant attempts to rely on the alleged unconstitutionality of the Interpretation Act 2005and breaches of European Union law, matters which were not addressed in either Court below.

4.2 Leave to appeal is being opposed by the Notice Party in circumstances where, it is respectfully submitted, the decision in respect of which leave to appeal is sought does not involve matters of general public importance and/or is not, in the interests of justice, necessary that there be an appeal to the Supreme Court.

4.3 For the reasons briefly outlined below, it is respectfully submitted that the decision is manifestly not in the category of decisions that the Supreme Court would give leave to appeal in respect of.

The decision does not involve any matter of general public importance

4.4 The Notice Party submits that the Application for Leave to Appeal cannot be considered as a "*point of such gravity and importance as to transcend the interests of the parties actually before the court*" nor is it "*in the interests of the common good that the law be clarified so as to enable it to be administered not only in the instant case but in future cases*", which is the definition of a matter of general public importance adopted by Laffoy J. in *Village Residents Association Limited v. An Bord Pleanála (No. 2) [2000] 4 I.R. 321* at 333.

4.5 The Notice Party submits that there is no novel legal issue identified in the Appellant's Application of Appeal, let alone an issue of general public importance. The Employment Equality Acts 1998-2011 make it abundantly clear what the legislature intended. The decisions of both the High Court and the Court of Appeal rely on the basic principles of statutory interpretation and existing jurisprudence and in reaching each of their respective decisions, the High Court and the Court of Appeal established that a literal interpretation of the relevant legislation should be applied.

4.6 The Appellant contends that the appeal raises issues of public importance because it involves the purported denial of constitutional and European rights to Irish citizens. In is Application for Leave, the Appellant points to the Interpretation Act 2005 and in particular, to Section 4 regarding the general application of the Interpretation Act 2005 and regarding the provisions pertaining to the calculation of time periods contained at Section 18 (h) of that Act. The Appellant grounds his application for leave to appeal on the basis that the application of the Interpretation Act 2005 to the Employment Equality Acts 1998-2011 does not comply with the requirements of

European Law and/or the Constitution, and refers to the principle of *generalia specialibus non derogant* in support of this contention. Notwithstanding the Notice Party's objection to the Appellant raising issues of EU and Constitutional law, it does by way of outline of the Notice Party's response to the Appellant's Application for Leave to Appeal, the Notice Party submits:

(a) Statutory time limits are necessary for providing certainty in law. It is not a breach of an individual's constitutional rights for a judicial or quasi-judicial body to refuse an appeal where an individual has not submitted an appeal within the statutory time frame. The determination of such time periods ~~i~~as set out in statute enjoy a presumption of constitutionality. It is respectfully submitted that it is not in the public interest for the Supreme Court to allow challenges to statutory time periods where, as in the present case, no legitimate basis has been raised to justify the challenge.

(b) The Interpretation Act 2005 and the Employment Equality Acts 1998-2011 enjoy a presumption of constitutionality. While the Appellant may not agree with their application and interpretation to his own circumstances, the provisions relating to appeals of to the Labour Court under the Employment Equality Acts 1998-2011 are clear, unambiguous and explicitly set out the intention of the legislature. The Notice Party respectfully submits that there is no basis for the Supreme Court to go behind the plain meaning of the text of the legislation and to seek to give an alternative interpretation of the legislation. It is submitted that the public interest would not be served by the Courts taking on the role of the legislature and rewriting statutes.

(c) The Interpretation Act does not contravene the rule of *generalia specialibus non derogant*. The Interpretation Act does not override the provisions of the Employment Equality Acts 1998-2011, but rather provides guidance as to the interpretation of common statutory terms. It is submitted that the application of the Interpretation Act provides consistency in statutory interpretation which is undoubtedly in the public interest.

4.7 The underlying appeal to the Court of Appeal concerns the refusal of the Labour Court to hear the Appellant's appeal of the decision of the Equality Tribunal on the basis that the Appellant was outside the statutory timeframe for submitting his appeal. This is not a matter of general public importance. The statutory provisions are clear and unambiguous in relation to timeframes for lodging an appeal and the Appellant's

failure to comply with the statute relates to his own private circumstances, and is not a matter of general public importance.

It is not necessary, in the interests of justice, that there be an appeal to the Supreme Court

4.8 It is respectfully submitted that it cannot be maintained that it is necessary in the interests of justice that there be a further appeal to this Honourable Court. The Appellant has had two full hearings in relation to substantially the same issues that form the subject matter of his Application for Leave. The Appellant made detailed and thorough submissions to both the High Court and the Court of Appeal on the same issues contained in this Application. In his submissions to the Court of Appeal, the Appellant referred to a large body of Irish, European and USA jurisprudence, authorities on the principles of interpretation of law and general legal principles. While the Appellant now seeks to rely on the Constitution in support of his appeal, which is not open to him to now do, he continues to rely on similar arguments which were previously submitted to the High Court and the Court of Appeal. The Appellant's submissions have been fully and comprehensively aired, addressed and dismissed by the High Court and the Court of Appeal. The interests of justice do not require a further hearing of these issues which have already been exhaustively and properly examined by two Courts.

4.9 The Notice Party further submits that the interests of justice would not be served by granting the Appellant leave to Appeal to the Supreme Court in circumstances where there is jurisprudence from the Supreme Court which supports the Notice Party's grounds of opposition to the Appellant's application for leave to appeal.

4.10 The Notice Party refers to the findings of this Honourable Court in *Hegarty & Hogan v Labour Court and Bank of Ireland* [1999] 3 IR 603 wherein Geoghegan J addressed the issue of the interpretation of a similar appeal provision by relying on the judgment of Blayney J, one of the majority judgments in the Supreme Court in *Howard v. Commissioners of Public Works* [1994] 1 I.R. 122. In *Hegarty*, Geoghegan J. quoted from the judgment of Blayney J. stating:

> "The latest authoritative statement of principle on the interpretation of statutes is *contained in the judgment of Blayney J. in Howard v. Commissioners of Public Works [1994] 1 I.R. 122. Blayney J., delivering one of the majority judgments in the Supreme Court, approved the traditional statements of principle contained in Craies on Statute Law (7th ed., 1971) at*

p. 64 and Maxwell on the Interpretation of Statutes (12th ed., 1976) at p. 28. The quotation from Craies reads as follows:-

"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary then to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver. 'The Tribunal that has to construe an Act of a legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words it is natural to inquire what is the subject-matter with respect to which they are used and the object in view'."

The equivalent passage in Maxwell followed by Blayney J. reads as follows:-

"The rule of construction is 'to intend the Legislature to have meant what they have actually expressed' [per Parke J. in R. v. Banbury (Inhabitants) (1834) 1 Ad. & El. 136 at p. 142]. The object of all interpretation is to discover the intention of Parliament, 'but the intention of Parliament must be deduced from the language used' [per Lord Parker C.J. in Capper v. Baldwin [1965] 2 Q.B. 53 at p. 61]. For 'it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law' [per Lord Morris in Davies Jenkins & Co. Limited v. Davies [1967] 2 W.L.R. 1139 at p. 1156]."

4.11 Geoghegan J went on to unequivocally address the issue of interpretation of the section as follows:

"*Applying these principles, I must hold that the respondent is correct in its interpretation of the relevant statutory provision.*

In plain English the expression "the date of the [Equality] Officer's recommendation" can only mean the date appearing on it. If the Oireachtas intended the 42 day period to commence on the date a party received the recommendation then that would have been stated. Time limits are framed and worded differently in different statutory codes and indeed in different statutory provisions within the same code. The Planning Acts, the Landlord and Tenant Acts and the Rules of the Superior Courts are all examples of codes or regulatory regimes where time limits feature

prominently. But in each case the Oireachtas or the Rules Making Committee may devise different ways of fixing the commencement date and different ways of fixing the termination dates. In this case each of the recommendations were dated and clearly the 42 day period commenced from that date.

By the same token the expression "shall be lodged in the Court" can only have one meaning. It can only mean that the document actually reached the Labour Court in the ordinary course of its everyday business. If therefore the notice was posted to the Labour Court there is no basis on which the expression "lodged in the Court" could be interpreted as meaning the date of posting."

4.12 The High Court, in interpreting a similar statutory time period, has duly followed the precedent of the Supreme Court.

4.13 The Notice Party has expended significant time and expense in defending the Appellant's applications on this matter. The Notice Party submits that it would not be in the interests of justice to require it to defend its position in the Supreme Court in circumstances where the Supreme Court does not have jurisdiction to grant the relief sought by the Appellant.

4.14 For the foregoing reasons, the Notice Party respectfully requests this Honourable Court to refuse the Appellant's application for leave to appeal the findings of the High Court.

5. **Notice Party's reasons for opposing the Appellant's appeal if leave to appeal is granted**

5.1 If leave to appeal is granted to the Appellant, the Notice Party shall make substantive submissions on the correctness of the decisions of the High Court and the Court of Appeal. It is submitted that in the circumstances submissions on the constitutionality and European law questions are unnecessary where such issues did not arise at the High Court trial or the Appellant's first appeal to the Court of Appeal. However, the Notice Party has briefly outlined its reasons for opposing the Appellant's appeal if leave to appeal is granted below.

5.2 In his Application for Leave to Appeal, the Appellant has contended that the application of the Interpretation Act 2005 to the Employment Equality Acts 1998-2011 is unconstitutional and contrary to the principles and laws of the European Union. The Appellant has not only not particularized the reasons for this contention, but did not make those arguments in the previous trial and first appeal, however the Notice Party submits that these contentions are entirely incorrect.

5.3 Section 83(1) of the Employment Equality Acts 1998-2011 sets down the timeframe for an appeal from a Decision of an Equality Officer to the Labour Court and states as follows:

> *Not later than 42 days from the date of a decision of the Director under section 79 , the complainant or the respondent may appeal to the Labour Court by notice in writing specifying the grounds of the appeal.*

5.4 The Employment Equality Acts 1998-2011 do not give the Labour Court any discretion in respect of the above timeframe, it cannot be extended. The above provision is a mandatory provision, in that should a party to a decision elect to appeal a decision, such appeal must be furnished to the Labour Court ***not later than*** 42 days fromthe date of the decision.

5.5 Section 4 of the Interpretation Act 2005 provides:

> *(1) A provision of this Act applies to an enactment except in so far as the contrary intention appears in this Act, in the enactment itself, or, where relevant, in the Act under which the enactment is made.*
>
> *(2) The provisions of this Act which relate to other Acts also apply to this Act unless the contrary intention appears in this Act.*

5.6 The Employment Equality Acts 1998-2011 do not contain any provision that excludes the application of the Interpretation Act 2005. Therefore, it is clear that the legislature intended that the Interpretation Act apply to those Acts.

5.7 Section 18(h) of the Interpretation Act 2005 defines how a period of time set down in an act should be construed as follows:

> *Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall be deemed to be included in the period and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall be deemed to be included in the period;*

5.8 Section 5(1) of the Interpretation Act 2005 provides for:

"In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) —

(a) *that is obscure or ambiguous, or*

(b) *that on a literal interpretation would be absurd or would fail to reflect the plain intention of—*

(i) *in the case of an Act to which paragraph (a) of the definition of "Act" in section 2 (1) relates, the Oireachtas, or*

(ii) *in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned*

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

5.9 It is submitted that there is nothing ambiguous about Section 83(1) of the Employment Equality Acts 1998-2011. It is further submitted that a literal interpretation of the section does not lead to an absurdity but rather reflects the intention of the Oireachtas at the time to allow for an appeal, subject to such an appeal being lodged within the predetermined timeframe.

5.10 The Appellant asserts that as a result of the rule of *generalia specialibus non derogant*, the Interpretation Act 2005, a general statute, should not take precedence over the Employment Equality Acts 1998-2011, specific statutes. The Appellant claims that reliance on the Interpretation Act 2005 contradicts the intention of the legislature, which is repugnant to Article 40.3.1 and 40.3.2 of the Constitution. Firstly, the Notice Party submits that it is evident from the plain meaning of Section 4 of the Interpretation Act 2005 that the Oireachtas intended the Act to apply to all enactments, unless specifically excluded from such an enactment. The wording of Section 4 is explicit on this point. It is submitted that Section 18 (h) operates to provide an unequivocal interpretation of Section 83 (1) of the Employment Equality Acts 1998-2011. The Interpretation Act 2005 replaced the previous 1993 and 1937 Acts which contained an identical provision. Interpretation Acts arise because of common divergences which arise when considering legislation, and they have been helpful for over 100 years in respect of the correct interpretation of particular provisions. Section 18 of the Act deals with the interpretation of various phrases, and Section 18 (h) deals with the calculation of time period. While it is accepted that the application of Section 18 (h) to Section 83 (1) of the Employment Equality Acts 1998-2011 would give the Appellant less than 42 days to enter an appeal, when drafting Section 83 (1) the legislature did however clearly use the words "*from the date of a decision*". It is submitted that the legislature, when drafting this provision,

was aware that any enacted legislation would be governed by the Interpretation Act unless it expressly departs from it, and therefore its intention is clear. Secondly, it is not the case that the Interpretation Act 2005 is taking precedence over the Employment Equality Acts 1998-2011, but rather that, the Interpretation Act 2005 provides the Court with general rules of construction of statutory provisions.

5.11 It is submitted that case law, including case law emanating from this Honourable Court, is consistent with this point. In this regard, the Notice Party refers again to one of the leading Irish Authorities, *Hegarty & Hogan v Labour Court and Bank of Ireland* [1999] 3 IR 603, wherein Geoghegan J addressed the issue of the interpretation of a similar appeal provision in Section 8(1) (e) of the Anti-Discrimination (Pay) Act, 1974 which states:

> *An appeal under this section shall be lodged in the Court not later than 42 days after the date of the equal pay officer's recommendation and the notice shall specify the grounds of the appeal.*

5.12 It is noted that the wording in relation to the lodging of an appeal under the Anti-Discrimination (Pay) Act 1974 differed from the wording of the Employment Equality Acts 1998-2011 (in that the 1974 Act provided that an appeal should be lodged 42 days after a date of a recommendation), it is submitted that the findings of the learned judge are relevant for the interpretation and lawfulness of Section 83 (1) of the Employment Equality Acts 1998-2011. The Notice Party has already quoted extensively from the judgment of Geoghegan J. who relied on the judgment of Blayney J, one of the majority judgments in the Supreme Court in *Howard v. Commissioners of Public Works* [1994] 1 I.R. 122.

5.13 It is thus submitted that the decision of the Labour Court in refusing to hear the Appellant's appeal is entirely consistent with Irish law and legal authorities on this point. It is further submitted that the Labour Court acted within its own jurisdiction and exercised its statutory function correctly in applying Section 83(1) to the Appellant's case.

5.14 If leave to Appeal is granted, the Notice Party reserves its right to make further submissions , if necessary.

6. Additional grounds on which the decision should be affirmed

None. For the avoidance of doubt, however, the Notice Party opposes each and every ground of appeal and every leave sought by the Appellant by way of appeal.

- **The Notice Party is not asking the Supreme Court to depart from one of its own decisions.**

- **The Notice Party is not asking the Supreme Court to make a reference to the Court of Justice of the European Union. In this regard, the Notice Party requests that the Supreme Court notes their opposition to the Appellant's request for a reference to the CJEU, which is unnecessary.**

- **If leave were granted, the Notice Party will request a priority hearing.**

Signed: Arthur Cox

ARTHUR COX
Solicitors for the Notice Party
Earlsfort Centre
Earlsfort Terrace
Dublin 2

To:

The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin

This notice is to be lodged and served on the appellant within 14 days after service of the notice of appeal.

THE SUPREME COURT

Appeal No: S:AP:IE: 2015:000049

Court of Appeal Record No.: 000818/2014

High Court Record No.: 2012/742JR

BETWEEN:

OWEN V MCGINTY

Appellant

-and-

THE LABOUR COURT

Respondent

-and-

GALWAY MAYO INSTITUTE OF TECHNOLOGY

Notice Party

RESPONDENT'S NOTICE LODGED BY NOTICE PARTY

Arthur Cox
Earlsfort Centre
Earlsfort Terrace
Dublin 2