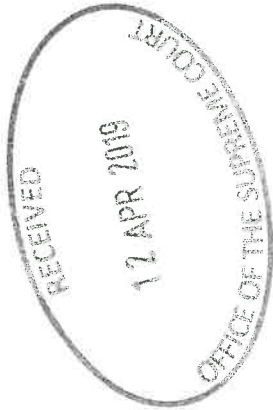


No. 2

O. 58, r. 18(1)



SUPREME COURT

Record No:

2019:000063

Respondent's Notice

Part I

1. Title of the Proceedings:

ENNIS PROPERTY FINANCE DAC

-v-

DOMINIC CARNEY

2. Name of Respondent: ENNIS PROPERTY FINANCE DAC

3. Application to extend time: Yes No

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

4. Do you oppose the applicant's application to extend time:

Yes No

If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.

5. Do you oppose the applicant's application for leave to appeal:

Yes No

6. Matter of general public importance:

- 1) The Applicant brought an application to dismiss a bankruptcy summons which had been issued by the Respondent. The application to dismiss the summons was refused in the High Court (by Order of Costello J. 16 July 2018). This Order was upheld by Order of the Court of Appeal (dated 20 February 2019).
- 2) There are no matters of general public importance engaged in this appeal. The Respondent has judgment against the Applicant in the sum of €100,000. That judgment was obtained in the High Court on 27 February 2017. The Applicant sought an extension of time to appeal from that decision and this was refused by the Court of Appeal. One of the reasons for this refusal was that the Applicant had not set out arguable grounds of appeal.
- 3) The Respondent has sought to recover this judgment sum through the mechanism of bankruptcy proceedings.
- 4) The Respondent does not accept that there are any significant constitutional issues engaged in this application for leave to appeal.
- 5) The Applicant has sought to rely on "*without prejudice*" communications in his application for leave to appeal. This is entirely inappropriate. Furthermore, the "*without prejudice*" communication has not been set out accurately by the Applicant.

- 6) The High Court and the Court of Appeal correctly rejected the claim that the bankruptcy proceedings had been brought for an ulterior purpose. The purpose of the proceedings was the recovery of a debt due.

Word count – 239

7. Interests of Justice:

- 1) The Applicant is lawfully indebted to the Respondent in the sum of €100,000. The Applicant has not paid this debt and the Respondent commenced bankruptcy proceedings to seek to recover this debt.
- 2) The Applicant has maintained contradictory positions on affidavit in relation to his assets. In addition, he did not swear a Statement of Affairs.
- 3) The interests of justice would be served by allowing the Respondent seek to recover its debt through the bankruptcy process.

Word count - 78

8. Exceptional Circumstances Article 34.5.4.:

N/A

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

- 1) The Applicant has not provided this Honourable Court with any information about these proceedings. Therefore, the Respondent will briefly set out the background to these proceedings.

- 2) The Applicant provided Bank of Scotland (Ireland) Limited with a personal guarantee (limited to the sum of €100,000) in respect of the debts of a company called Philisview Properties Limited. Subsequently, Bank of Scotland (Ireland) Limited merged with Bank of Scotland plc. Thereafter, Bank of Scotland plc sold the loan and related security to Ennis Property Finance Limited. The said company defaulted on the loan and Ennis Property Finance Limited demanded the sum due on foot of the personal guarantee from the Applicant. The Applicant did not pay the sum demanded and summary proceedings were instituted. Subsequently, Ennis Property Finance Limited changed its name to Ennis Property Finance DAC ("the Respondent").
- 3) By Order dated 27 February 2017 Twomey J. granted the Respondent summary judgment against the Applicant in the sum of €100,000.
- 4) The Applicant sought an extension of time to appeal the Order of Twomey J. from the Court of Appeal.
- 5) By Order dated 6 November 2017 the Applicant was refused an extension of time to appeal on the grounds that the Applicant had not set out an arguable ground of appeal.
- 6) Therefore, the Applicant is lawfully indebted to the Respondent in the sum of €100,000.
- 7) In his application the Applicant has set out wide ranging grounds of appeal. The Respondent does not intend replying to all of these grounds of appeal.
- 8) The Respondent issued a Bankruptcy Summons against the Applicant. The Respondent could not serve the summons. As far as the Respondent is concerned the Applicant was evading service. The Respondent obtained an Order extending time for the service of the Bankruptcy Summons. The third ground of appeal referred to by the Applicant relates to this Order. The Bankruptcy Summons was issued on Monday 22 May 2017. Order 76, Rule 14(1) of the Rules of the Superior Courts provides that the bankruptcy summons shall be personally served within 28 days from the date of the bankruptcy summons. However, the rule also makes clear that the Court can Order an extension of time to serve the Summons. Order

76 does not state that the application for the extension of time has to be made within the 28 days.

- 9) Leaving that issue aside, Order 122, Rule 3 of the Rules of the Superior Courts provides that at the time for doing an act or taking any proceeding expires on a Saturday, Sunday or another day when the Courts offices are closed and by the reason thereof such act or proceeding cannot be done, a party will be entitled to bring the application on the day in which the Court office is next open. The Bankruptcy Summons issued on 22 May 2017, 28 days from 22 May 2017 was Sunday 18 June 2017. It was not possible for the Respondent to apply for an order extending the time for the service of the Bankruptcy Summons on Sunday 18 June 2017. However, the application to extend time for the service of the Bankruptcy Summons was made on Monday 19 June 2017 which was the day the Court offices were next open. Therefore, this application was properly made.

- 10) The seventh ground of appeal referred to by the Applicant is a claim that the Respondent had an improper purpose for bringing the Bankruptcy Summons. The eleventh ground of appeal claims that the Bankruptcy "*Petition*" was issued for a collateral purpose. In the High Court and the Court of Appeal the Applicant referred to the judgment of Budd J. in *McGinn v Beagan* [1962] i.r. 364 In that case Budd J. struck out a summons on the basis of an ulterior motive or an improper purpose. The Respondent has no issue with the legal principle set out by Budd J. in that case. However, the issues identified by Budd J. do not arise in this case. The purpose of the Bankruptcy Summons (and the *Petition*) issued by the Respondent is so that it can recover the debt due to it. This purpose was correctly accepted in the High Court and the Court of Appeal.

- 11) The fifteenth ground of appeal set out by the Applicant relates to a complaint he has made to an Garda Síochána. The Respondent is not aware of any ongoing Garda investigation. In any event, it is respectfully submitted by the Respondent that the Learned High Court Judge and the Court of Appeal were correct in their determination that the mere fact that the Applicant may have made a complaint to the gardaí about the Respondent was not a good basis for setting aside the Bankruptcy Summons.

- 12) The claim of bias referred to by the Applicant is denied.

10. Cross Application for Leave:

N/A

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

N/A

12. Priority Hearing:

Yes

No

13. Reference to CJEU:

N/A