

No. 2

O. 58, r. 18(1)



SUPREME COURT



Record No:

37/2019

Respondent's Notice

Part I

The information contained in this part will be published. It is the respondent's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. Title of the Proceedings:

PERMANENT TSB FORMERLY IRISH LIFE & PERMANENT TSB PLC

-v-

JAMES WALSH

2. Name of Respondent:

Permanent TSB Formerly Irish Life & Permanent TSB Plc

3. Application to extend time:

Yes

No

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

N/A

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

Yes

No

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. This is a simple possession suit pursuant to a charge securing two loan accounts.
2. The Defendant has purported to offer only one substantive defence; a claim on affidavit that he settled his indebtedness with a (then) employee of the Plaintiff, a Mr. Keenan. The Plaintiff, while denying from its records that any such agreement was made, did not procure the affidavit evidence of Mr. Keenan. It simply pointed out that two letters written by the Defendant to the Plaintiff shortly after the meeting at which settlement was alleged (which were exhibited by the Defendant himself) discussed possible proposals to address the debts in issue in terms inconsistent with any such settlement. Thus, the Defendant's own evidence demonstrated there had been no settlement. In effect, both Courts below accepted the Plaintiff's submission in that regard.
3. The legal test for a summary application for possession was not in dispute and no question of general importance arose in either Court. Nor are the relevant tests in doubt.
4. It was not argued in either Court below that the matter should be adjourned to plenary hearing to allow the Defendant subpoena Mr Keenan.

Word count - 188

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. Fair procedures were applied in both the Circuit Court and High Court.
2. The test to be applied as to whether possession proceedings should be adjourned to plenary hearing are the same that are to applied in money judgment cases (i.e. is there a *bona fide* defence).
3. The Defendant was afforded an opportunity to adduce fresh evidence in the High Court, notwithstanding the unusual nature of such an application on a summary application.
4. Despite the fact that the Plaintiff instituted the within proceedings summarily in December 2014, the matter was not finally adjudicated upon in the Circuit Court until January 2018. The High Court judge extended the stay on the order for possession to May 2019. Throughout that period no payments have been made to the larger mortgage account and only one payment has been made to the smaller mortgage account.

Word count – 136

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. Order 5B of the Circuit Court Rules and Order 61 of the Rules of the Superior Courts set out the basis upon which possession proceedings are conducted at first instance in the Circuit Court and how the appeals to the High Court are governed.
2. While it is accepted that the issue of whether an appeal to the Supreme Court is available in proceedings governed by Section 39 of the Courts Of Justice Act 1936 is still to be determined (see *Pepper Finance v. Cannon* [2019] IESCDET 5), before such a determination can be made, an appellants must show that the substantive issues sought to be pursued on further appeal comprise (a) matter(s) of general importance or that it is in the interest of justice to permit the appeal. The Defendant in the within proceedings has failed to show that either of the tests are met.
3. Furthermore, there is a requirement upon him to show that exceptional circumstances exist to allow for an appeal directly form the High Court and

he has failed to do so.

4. This is simply a case of a debtor asserting a settlement agreement, which is contradicted by his own contemporary correspondence. The Defendant failed to show he had a bona fide defence at first instance and failed again on appeal. The circumstances do not include any matter of general, pressing or public importance.

Word count – 224

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

10. Cross Application for Leave:

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

12. Priority Hearing:

Yes

No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

The mortgage account first went into arrears in 2009. As of January 2018, leaving a total amount due of €203,561 which is entirely made up of arrears. The proceedings were issued in December 2014, the original order for possession was granted in the Circuit Court in January 2018 and the High Court delivered its judgment in the appeal in January 2019.

Word count: 61

13. Reference to CJEU: