

SUPREME COURT

Respondent's Notice

Supreme Court record number

Record No. 2017/11 CAF

LM V GS

Date of filing: 21/11/17

Name of respondent: LM

Respondent's solicitors: Jennifer O'Brien, Solicitors

Name of appellant: GS

Appellant's solicitors: Messrs Herbert G. Kilcline, solicitors, 10 Bessborough Parade, Dublin remain on record for the Appellant herein.

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name: LM

The respondent was served with the application for leave to appeal and notice of appeal on date: 24th November 2017

The respondent intends:

to oppose the application for an extension of time to apply for leave to appeal – none such sought

to oppose the application for leave to appeal - yes

to ask the Supreme Court to dismiss the appeal to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court – the Respondent will contend that there is no entitlement to appeal the decision which the Appellant seeks to appeal, such decision having been made in the context of an application which came before the High Court by way of appeal from the Circuit Family Court.

Other (*please specify*)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal. The details as provided are correct.

Details of respondent's representation are correct and complete on notice of appeal: Yes, such details are correct

Respondent's Representation

Solicitor Jennifer O Brien

Name of firm Jennifer O Brien Solicitors

Email jenniferobrien@iflc.ie

Address Suite 318d The Capel Building, Mary's Abbey, Dublin 7

Telephone no. 01 4804404/ 0868235898

Document DX 200318d Capel Building

Exchange no.

Postcode D07 FY56

Ref. JMOB

How would you prefer us to communicate with you?

Document Exchange

E-mail X

Post

Other (please specify)

Counsel

Name Nuala E. Jackson SC

Email nejackson@lawlibrary.ie

Address Law Library, Four Courts, Dublin 7

Telephone no.

Document

Exchange no.

Postcode

Counsel

Name Lyndsey Keogh BL

Email Lyndsey.Keogh@lawlibrary.ie

Address Law Library, Four Courts, Dublin 7

Telephone no.

Document

Exchange no.

Postcode

If the Respondent is not legally represented please complete the following
Current postal address

Telephone no.

e-mail address

How would you prefer us to communicate with you?

Document Exchange

E-mail

Post

Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

Not applicable. No such extension of time is sought.

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

The within proceedings were commenced before the Circuit Family Court by Civil Bill issued on the 28th day of February 2014. The Respondent herein sought a sale of property which was jointly owned by the parties, which property she had vacated in or about February 2014 and in respect of which she had continued to discharge one half of the mortgage repayment, despite living and having primary care of the parties' daughter elsewhere. Orders were made by the Circuit Family Court (Judge O'Kelly) on the 5th day of June 2015. On appeal to the High Court, by Order of Abbott J. on the 19th February 2016, it was ordered that

a premises situate at 70 Connawood Lawn, Old Connawood, Bray in the County of Wicklow and held the joint names of the Respondent and the Appellant be sold, the Respondent and the Appellant being an unmarried couple with one child. The said Order was made pursuant to section 31 of the Land and Conveyancing Law Reform Act, 2009. The said Order provided, inter alia, that the property be placed on the market for sale upon the expiration of a period of three months from the 8th February 2016 with the closing date in respect of such sale to be no earlier than four months thereafter. The parties were ordered to continue to jointly discharge the mortgage on the property pending the sale of the property. The Respondent herein fully complied with the terms of the said Order. The Appellant failed, refused and neglected to comply with the terms of the said Order and a motion for attachment and committal issued before the Circuit Family Court. The Appellant was Ordered by the Circuit Family Court to provide vacant possession of the said property by Orders of the 30th November 2016, the 19th December 2016 and the 8th February 2017. A stay on the last mentioned Order was refused by the Circuit Family Court on the 24th February 2017. The Appellant failed to comply with any of these orders. The Appellant appealed the Orders of the 8th February 2017 and of the 24th February 2017 which said appeals were dismissed by the High Court on the 8th May 2017. The Appellant failed, refused and neglected to comply with the Orders of the Circuit Court in respect of which the appeals had been dismissed and furthermore failed to comply with the Orders of the High Court and the matter had to be re-entered before the High Court on a number of occasions as a result of the Appellant's breaches. Orders were made by the High Court herein on the 8th May 2017, 17th May 2017, 12th July 2017 and on the 24th October 2017.

In the context of the Orders of the High Court aforementioned, the High Court had to appoint replacement auctioneers for the premises due to the interference of the Appellant with the Court ordered auctioneers for the premises. This was done by Order of the 12th July 2017. Pursuant to the Order of Abbott J. of the 19th February 2016, joint carriage of sale had been ordered with Messrs. Michael Shiel and Company (a firm with a specialist conveyancing department) being appointed to represent the Respondent and the Appellant's then solicitors being appointed to act on his behalf, namely Ryan and Company, solicitors. Due to the continued breaches of the Appellant, sole carriage of sale was ordered to the solicitors appointed by the Respondent, namely Michael Shiel and Company, by Order of Reynolds J. of the 12th July 2017. Due to the continued breaches and interference by the Appellant, his servants or agents, with the sale, the said solicitors indicated that they were no longer in a position to act in the sale and, in consequence, the High Court (Reynolds J.) ordered that sole carriage of sale be granted to the solicitors for the Respondent in the within proceedings, namely Jennifer O'Brien, solicitors.

The Respondent will contend that no right of appeal arises herein, the matter having been heard and determined by the High Court in the context of a Circuit Court Appeal.

Without prejudice to the foregoing, it is submitted that no matter of general public importance arises. Joint carriage of sale was ordered herein initially, with sole carriage being granted to the solicitors nominated by the Respondent only in the context of the Appellant's continued breaches of Orders made and his continued interference with the sale of the property concerned. The professionals appointed by the Court to act in the sale of the property, both the auctioneer and the solicitors, both communicated in writing (which written communications were exhibited in Affidavits filed) that they could not continue to act based upon the continued breaches on the part of the Appellant and based upon his conduct towards them. In this context, the High Court directed the solicitors for the Respondent, which firm

has so acted from the outset of the within proceedings before the Circuit Court, have carriage of sale. The Respondent will contend that it is perfectly normal and usual that solicitors for parties to proceedings would act in the sale of property the subject of the proceedings and that sole carriage would be ordered in circumstances such as exist in the current situation in which there has been continued efforts to frustrate the Orders of the Courts.

The solicitors concerned are not creditors of the Appellant as he contends. Orders for costs have been made against the Appellant in the context of the within proceedings but such Orders are made in favour of the Respondent and not in favour of the solicitors concerned. The submissions of the Appellant in relation to the sale price of the property are entirely at odds with his evidence before the Circuit Court and the High Court and, in any event, the solicitors concerned have no role in the determination of the sale price, being entirely guided by the appointed auctioneers in this regard. The sale of the property has been significantly hindered by the destructive actions of the Appellant in relation to the property concerned. Reference is made to the Affidavits filed herein in this regard.

List of Affidavits filed herein:

1. Affidavit of Jennifer O Brien sworn on 18 October 2016 and exhibits thereto.
2. 2. Grounding Affidavit of LM sworn on 16th day of January 2017.
3. Affidavit of Jennifer O Brien sworn on 16th day of January 2017.
4. Affidavit of GS unsworn.
5. Affidavit of Jennifer O Brien sworn on 14 February 2017 & exhibits thereto.
6. Affidavit of GS sworn on 21 February 2017 (no swearing block) (incomplete?)
7. Affidavit of LM sworn on 3 May 2017 & exhibits thereto.
8. Affidavit of NM sworn on 21st June 2017.
9. Affidavit of LM sworn on 21st June 2017.
10. Affidavit of Jennifer O Brien sworn on 21st September 2017.
11. Affidavit of GS sworn on 16th October 2017.

List of Orders made herein:

1. Order of the Circuit Family Court made on 5 June 2015.
2. Order of the High Court made on 19 February 2016.

3. Order of Circuit Court made on 30 November 2016.
4. Order of Circuit Court 19th December 2016.
5. Order of the Circuit Family Court made on 18 January 2017.
6. Order of the Circuit Family Court made on 8 February 2017.
7. Order of the Circuit Family Court made on 24 February 2017.
8. Order of the High Court dated 17th May 2017.
9. Order of High Court dated 12 July 2017.
10. Order of High Court dated 24th October 2017.

There was no lack of fairness on the part of the High Court in relation to the Order the subject of this application, the Appellant being represented by his solicitors, Messrs. Herbert G. Kilcline, on the occasion in question, which said firm remains on record herein. Both parties were afforded an opportunity to make submissions and did so.

4. Respondent's reasons for opposing leave to appeal

The Respondent contends that there is no right of appeal in circumstances in which this matter came before the High Court in the context of an appeal from a motion in the Circuit Court.

* the decision in respect of which leave to appeal is sought does not involve a matter of general public importance

1) there is no such matter involved in determining the issue of carriage of sale in the context of a court ordered sale of property in particular where the determination of the issue of carriage of sale has arisen due to the breaches and/or misconduct and/or interference with Court orders by one of the parties concerned.

2) there is no issue concerned herein which transcends the interests of the parties concerned such as would cause it to be considered a point of general public importance. In this regard, the Respondent will refer to the decisions in **Irish Press v. Ingersoll** [1995] 1 ILRM 117 and **Lancefort Ltd. V. An Bord Pleanala** [1998] 2 IR 516.

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

An Order for sale of the property was made by the High Court on the 19th February 2016. This Order envisaged the completion of such sale by the

September 2016. The sale remains incomplete in circumstances in which the breaches by the Appellant of court orders and the failure, refusal and neglect of the Appellant to obey such court orders have necessitated no less than seven subsequent court orders being made in order to advance the sale. Throughout this time, the Respondent has continued to discharge one half of the mortgage repayments (there have also been breaches by the Appellant in this regard) and, indeed, she has been discharging one half of the mortgage repayments despite not being in occupation of the property since February 2014. The interests of justice demand that this leave to appeal herein be refused/ that any appeal be dismissed in circumstances in which the actions of the Appellant have repeatedly and persistently sought to frustrate the court orders made herein.

* there are no exceptional circumstances warranting a direct appeal to the Supreme Court.

This is a consequential order, necessary to the implementation of an order for sale of the property concerned. This is an order which is routinely made particularly where the actions of one party have inhibited the achievement of the objective sought in the main order.

**delete where inapplicable*

5. Respondent's reasons for opposing appeal if leave to appeal is granted

The Respondent repeats the reasons at 4. Hereof.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Nuala E. Jackson SC

Lyndsey Keogh BL

Jennifer O'Brien, solicitor

6. Additional grounds on which decision should be affirmed

None such

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

Yes

No X

If Yes, please give details below:

.....

make a reference to the Court of Justice of the European Union?

Yes

No X

If Yes, please give details below:

.....

Will you request a priority hearing?

Yes

No X

If Yes, please give reasons below:

.....

Please submit your completed form to:

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

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