



Appendix FF - No. 2

O. 58, r. 18(1)

THE SUPREME COURT
RESPONDENT'S NOTICE

Supreme Court Record Number: S:AP: IE2017:000127

Court of Appeal Record Number: 2016/00055

The High Court Record Number: 2015/248MCA

John Keon

(Appellant)

-v-

**Mark Gibbs (in his capacity as Receiver over Certain Assets of Joe McNamara)
and the Private Residential Tenancies Board**

(Respondents)

Date of filing: **30th August 2017**

Name of Respondent: **Mark Gibbs (In his Capacity as Receiver over Certain Assets of Joe McNamara)**

Respondent's solicitors: **Sheehan & Company, 1 Clare Street, Dublin 2**

Name of Appellant: **John Keon**

Appellant's solicitors: **J.V. Geary Solicitors, Linenhall Street, Castlebar, Co. Mayo**

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: **Mark Gibbs (In his Capacity as Receiver over Certain Assets of Joe McNamara)**

The Respondent was served with the application for Leave to Appeal and Notice of Appeal on the: **18th day of August 2017.**

The Respondent intends:

to oppose the application for leave to appeal. – Yes

to ask the Supreme Court to dismiss the appeal. – Yes

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 .

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.

Details of Respondent's representation are correct and complete on Notice of Appeal: **Yes**

Respondent's Representation:

Solicitor

Name of firm

Email

Address

Telephone no.

Document

Exchange no.

Postcode

Ref.

How would you prefer us to communicate with you?

Document Exchange X

E-mail X

Post X

Other (please specify)

Counsel

Name

Email

Address

Telephone no.

Document

Exchange no.

Postcode

Counsel

Name

Email

Address

Telephone no.

Document

Exchange no.

Postcode

If the Respondent is not legally represented please complete the following; N/A

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.

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

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

The Respondent disputes not only the content, but also the form in which the purported information about the decision that it is sought to appeal is presented.

- 1. In April 2006, Joseph McNamara purchased by way of Long Lease the premises situate at and known as Number 14 Dun na Carraige, Salthill, County Galway (hereinafter referred to as "*the Premises*"), in respect of which a mortgage was granted to IIB Homeloans Limited on the 12 April, 2006.**

By a Letting Agreement in writing dated 6 June, 2012, the Appellant took a tenancy of the Premises for a fixed term from 6 June 2012 to 6 June 2014, at a monthly rent of €400.00 and paid a security deposit of €1,800.00.

It was expressly stated (and agreed) that the Premises was “*up for sale*” and that the Appellant would vacate on one month’s notice in the event of it being sold.

The Respondent was appointed Receiver on 4 October 2012 over, inter alia, the Premises. He made contact with the Appellant who paid rent to January 2013, but then ceased. The Appellant represented that he had sublet the Premises to students and would deliver vacant possession thereof in May 2013, when the subtenants’ examinations had been completed.

The Respondent exercised considerable forbearance and did not issue a Notice of Breach of Obligation of Tenancy until the 9 January, 2014. This elicited no response and on the 22 January, 2014, a Warning Notice was sent. No rent was paid and on the 10 February, 2014, a Notice of Termination issued.

Initially, the Private Residential Tenancies Board assigned an Adjudicator to the case, who set the 15 July, 2014 for hearing. On 14 July 2014, the Appellant claimed to have entered a 999 year lease with the “*Rodolphus Allen Family Private Trust*” by which he claimed to have acquired a long leasehold title without explaining how the interest of Joseph McNamara or the mortgagee were by-passed. It appears that the Appellant no longer seeks to rely on such purported 999 year lease.

An undated report of the Adjudicator found that the Appellant was overholding and liable for rent.

A Notice of Appeal pursuant to Section 100 of the Residential Tenancies Act, 2004, was sent by the Appellant dated the 25 August, 2014. A Tenancy Tribunal was duly constituted and a hearing date set for 22 May, 2015.

There is one Determination Order dated the 23 June, 2015. The Appellant is incorrect in his reference to the Tenancy Tribunal’s notification of its decision as a Determination Order.

Further, no confusion arose as all appeal times were calculated from the issue of the actual Determination Order.

2. As there was no stay granted on the Determination Order directing the Appellant to pay rent and vacate the Premises within 14 days of its issue, at any stage, and as no stay was sought on such Order in the Notice of Appeal of the Appellant to the Court of Appeal dated the 8 February, 2016, on 24 February, 2016, an Originating Notice of Motion to enforce the Determination Order issued in Galway Circuit Court.

The matter was heard on the 4 May, 2016, when the Appellant was represented by Counsel.

The Court granted the enforcement Order, and directed that possession was to be delivered within seven days of service of the Order.

The Appellant is incorrect in his assertion that the Respondent elected “*for the PRTB process and whilst actively engaged in that process then and only then issue[d] Circuit Court Ejection proceedings*”. Enforcement of the PRTB Determination is, as prescribed by Section 124 of the Residential Tenancies Act 2004, via the Circuit Court.

3. The Appellant incorrectly identifies the place of “*arguable grounds of appeal*” in the context of this case. The Respondent has at all times contended that in order for any purported point of law upon which the Appellant claims to be appealing to be considered, the Court must first be satisfied (before granting an extension of time to appeal) that the Appellant clearly demonstrates that there are arguable grounds for appeal. The Appellant signally failed to provide any evidence at all, and no other person provided any evidence of arguable grounds.
4. The Respondent provided evidence of his appointment as Receiver which was sufficient for the Tenancy Tribunal. The Respondent’s abiding contention is that the Appellant lacks the required *locus standi* to challenge the appointment of a Receiver over the assets of his landlord.

4. Respondent’s reasons for opposing leave to appeal

If leave to be appeal is being contested, set out concisely here the respondent’s reasons why:

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—

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

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

1. Order 84C (introduced by SI 14 of 2007) describes a power of the High Court to grant an extension of time to appeal from a statutory body, but only if (inter alia) the Court “*is satisfied that there is good and sufficient reason for extending that period*”. This is (it is respectfully submitted) readily identifiable with the requirement according to the test in *Eire Continental Trading Company Limited v Clonmel Foods Limited* [1955] IR 170 that the intended appellant demonstrate arguable grounds of appeal. It is submitted that introducing a similar test in 2007 bolsters the logic behind the “*arguable grounds*” requirement.
2. Neither in the High Court nor in the Court of Appeal was it suggested that any intended appellant was required to satisfy both the *Eire Continental* test and the requirements of Order 84C. In both Courts it was found, however, that no arguable grounds for appeal were identified, and in the Court of Appeal Mr. Justice Hogan stated at paragraph 29 of his Judgment that “*in the absence of arguable grounds any such appeal will prove to be futile*”. No procedure of Court or challenge by the Respondent has frustrated the Appellant in prosecuting his appeal, he has signally failed to demonstrate that it is

anything other than futile.

3. **The Residential Tenancies Act 2004 provides an inexpensive and informal forum for airing disputes between residential landlords and tenants, with a facility for appeal if clear timelines and requirements are met. It is this particular tenant's failures which prevented him from prosecuting his appeal.**
4. **As the only evidence of occupation provided to either Court below was of occupation by subtenants of the Appellant, there can be no issue in this case regarding the primary residence of the Appellant or any constitutional issue associated therewith.**
5. **The Respondent did not "*issue and prosecute Circuit Court Ejection proceedings*" against the Appellant. The Respondent brought an originating motion in the Galway Circuit Court to enforce the Tenancy Tribunal's Determination Order, which was not the subject of any stay, nor the subject of any application for a stay.**
6. **The Respondent's conduct outlined at paragraph 5 of Section 5 of the Appellant's notice cannot amount to an abuse of process, as it very strictly observed the process.**
7. **Section 134(1) of the Residential Tenancies Act, 2004, obliges a landlord to register a tenancy. Upon appointment as Receiver, it was prudent for the Respondent to register the tenancy, as he was obliged to so do. Absence of registration of the tenancy would not have entitled the tenant to any greater access to Court.**
8. **Paragraph 8 is misconceived as it interprets the Respondent's Circuit Court application as parallel to the PRTB Determination Order, as opposed to consequent thereto.**
9. **Paragraph 9 appears to be premised on a "*meritorious appellant*" being deprived of a right to appeal due to a finding of fact in a lower tribunal. Neither the merit in the appeal or the error of fact have been identified.**

There is nothing in this case which involves any matter of general public importance and no interest of justice would be served by extending time to appeal the Determination Order of 23 June, 2015.

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

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. **As the intended Appellant's tenancy was terminated for non-payment of rent and in any event would have expired one year prior to the Determination Order, it was repeatedly put to the Appellant that he was required to demonstrate some substantive injustice or wrong suffered, prior to it being appropriate to consider the conduct of the Tenancy**

Tribunal. As the Appellant never identified any such injustice or wrong, consideration of the Tenancy Tribunal's conduct was and remains futile.

2. The Appellant is simply incorrect in his assertion that there were two Determination Orders, there was only one being that dated 23 June 2015. In any event, any alternative date pre-dated that used in calculating the time for appeal, so there is no substance in the point.
3. The learned High Court Judge invited submissions regarding Order 84C appeals from statutory bodies, not *Eire Continental*. Having considered authorities on the phrase "*good and sufficient reason*" used in Order 84C and other statutory provisions, Baker J found that assessment of such reason required demonstration of arguable grounds.
4. Neither the High Court nor the Court of Appeal identified any substantive point of law upon which they would allow the appeal proceed. Having failed to identify any wrong or injustice suffered, categorisation of the Appellant's purported grounds of appeal as "points or law" or otherwise was not warranted.
5. Baker J in the High Court considered the matter as an appeal to which Order 84C applied and at paragraph 49 of her Judgment set out clearly what she considered a Court should have regard to when dealing with such appeals. Hogan J in the Court of Appeal at paragraph 28 of his Judgment considered that it was sufficient for that Court to focus on "*a critical factor so far as the present appeal is concerned, namely, whether the appellant can point to the existence of even arguable grounds*". Both Courts clearly explained why their consideration did not go beyond identifying the lack of arguable grounds, as it was futile to do so.
6. No ejectment proceedings issued. Section 182 of the Residential Tenancies Act 2004 requires that disputes be referred to the Private Residential Tenancies Board, which is what the Respondent did. There was no surreptitious act by the Respondent, he issued enforcement proceedings to secure the relief granted by the Determination Order.
7. Ground numbered 7 is misconceived. Upon appointment, the Respondent was obliged to register the tenancy of the Appellant and accusations of improper purpose or abuse of such process are groundless. Lack of registration would not have allowed the Appellant to pursue any Court remedy otherwise unavailable.
8. It is not for the Court to identify the Appellant's purported "*points of law*", nor to define the expression for the convenience of the Appellant. As no arguable grounds for appeal were advanced in either Court when applying to extend time for appeal, the application was refused.
9. Hogan J in paragraph 26 of his Judgment observed that Section 123(3) was capable of being interpreted as allowing no extension to the 21 day "relevant period" for appeal. Hogan J declined to give a conclusive view on the section, however, for the stated reason

(in paragraph 27) that the application was without merit.

10. It is suggested that the *“the appellant is understood to promote or seeks to promote his appeal on generalised complaints that the tribunal had breached fair procedures”* as if this point escaped the attention of the High Court and the Court of Appeal. There is a concession by the Appellant that any one of the purported grounds would be insufficient to warrant extending time, followed by an unfounded claim that the aggregation of such unconvincing grounds amounts to an arguable ground. This appears flawed in law and logic.

11. It is asserted that the learned High Court Judge attached insufficient weight to an alleged delay on the part of the Respondent in furnishing the mortgage between Joseph McNamara and IIB Homeloans Limited to the Appellant. The Appellant never had any right to such mortgage, and (as observed by Baker J at paragraph 62 of her Judgment and Hogan J at paragraph 31 of his Judgment) Section 108(5) of the Land and Conveyancing Law Reform Act 2009 provided the Appellant with all the protection he needed against any flaw in the Respondent’s appointment. If the document was not relevant to the hearing, no delay in its being furnished can form an arguable ground for appealing any part of the Determination Order.

12. The Respondent has been caused much loss, inconvenience and expense by the Appellant’s repeated attempts to advance an appeal which cannot succeed.

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

Gavin Mooney BL

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

.....

Are you asking the Supreme Court to:

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

Yes

No

If Yes, please give details below:

.....

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

Yes

No

If Yes, please give details below:

.....

Will you request a priority hearing?

Yes

No

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.

Catherine Shanley
Solicitor,
Sheehan & Conboy
1, Clare Street,
Dublin 2.