THE COURT OF APPEAL
(CIVIL)

Neutral Citation Number [2020] IECA 352

Record Number: 2018/399

Donnelly J.
Haughton J.
Collins J.

BETWEEN/

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND AND SIMON COYLE

PLAINTIFFS/RESPONDENTS

- AND –

JOHN LYONS, NOEL GRIFFIN AND BRIAN HADE

DEFENDANTS

- AND –

NIALL HADE

DEFENDANT/APPELLANT

JUDGMENT of Mr. Justice Robert Haughton delivered on the 10th day of December 2020

1. This is an appeal by the fourth named defendant Niall Hade ("Mr. Hade") only from an order of the High Court (Pilkington J.) made on 9 October 2018 granting various interlocutory orders to the first named respondent ("the Bank") and the second named respondent ("the Receiver") in respect of the property comprised in Folio 56604L of the Register of Leaseholders County Dublin, and known as 7A, Oakley Road, Ranelagh, in the City of Dublin ("the Property").

2. In addition there is an application before this court on behalf of the Bank pursuant to Order 17, rule 4 and/or Order 15, rule 14 of the Rules of the Superior Courts 1986 for the substitution of Bank by Link ASI Limited, or alternatively the joinder of Link ASI Limited as a plaintiff in the within proceedings.

3. The history to these proceedings is that certain loans were made by ICS Building Society to the first three named defendants in 2002 and 2006, secured by a Mortgage and Charge executed by those defendants on 24 April 2003 ("the Mortgage") in respect of the Property, and also over the property described in Folio 56605L which also forms party of

7A, Oakley Road. The Mortgage was duly registered as a burden on both folios on 23 May 2003. Clause 5.01(k) of the Mortgage contained a covenant on the part of the mortgagors –

"(k) Not to convey, transfer, assign, demise, lease, let, licence or part with the possession of the Mortgaged Property or any part thereof or any interest therein without the prior written consent from the Society".

4. By transfer effected by Statutory Instrument 257 of 2014 made under the Central Bank Act, 1971 as amended, the liabilities of the first, second and third named defendants to ICS Building Society and the benefit of the Mortgage were transferred to the Bank.

5. By deed of appointment dated 3 July 2015 the Bank appointed Mr. Coyle as Receiver over the Property.

6. On or about 1 June 2015 the first, second and third named defendants purported to enter into a Lease Agreement for the property with Mr. Hade, at an initial rent of €42,000 per annum, being a rate of €3,500 per month, for a term of two years and nine months. Mr. Hade is in occupation of the property, and has since that time run it as a hostel for the homeless under ongoing contractual arrangements with Dublin City Council.

7. The plenary summons herein was issued on 16 July 2018 and in it the respondents seek possession of the property, interlocutory and permanent injunctions and certain declarations, and damages. On 17 July 2018 the respondents caused a Notice of Motion to issue seeking interlocutory injunctions, and ancillary orders in relation to the furnishing of accounts of rents and deposits and books and accounts relating to the property, grounded on an affidavit of Ms. Hilary Larkin sworn on 16 July 2018. Ms. Larkin is a director of Mazars, the firm in which the Receiver was formerly a joint managing partner, and in which he was, at the time she swore her affidavit, a consultant. A verifying affidavit was also sworn by Ms. Marie Carey on behalf of the Bank.

8. The first, second and third named defendants did not enter any appearance and did not oppose the application for interlocutory orders.

9. Mr. Hade however did oppose the application and swore a short Replying Affidavit dated 8 October 2018. In paragraph 2 he takes a technical *locus standi* objection to the Receiver on the basis that he is no longer in the employment of Mazars, and he objects to Ms. Larkin swearing her grounding affidavit. In para. 3 he asserts "*There is no serious question to be tried in that there is a valid lease in being, and has been agreed by the Receiver*". A copy of that lease is exhibited by him at "NH 1". At para. 4, in response to Ms. Larkin's averments, he denies that the Receiver has been denied access to the property. At para. 5 he asserts that he has been named as "Niall Hayes" in the proceedings "*in order to mislead and confuse the court*". In para. 6 he asserts that the balance of convenience rests with him as the Receiver has never been denied access, and he asserts that "*damages are not an adequate remedy if the court should ultimately*

determine in favour of Mazars" – by which it is reasonably clear that he meant to aver that damages would be an adequate remedy if the plaintiffs were ultimately to succeed.

10. It is the case that Mr. Hade was named in the proceedings initially as "Niall Hayes". This is not surprising as the copy lease exhibited by Mr. Hade and purportedly made on 1 June 2015 is between the first, second and third named defendants as landlord and "Niall Hayes of *18A Oldcourt Cottages Dublin 24*" as tenant.

11. In his affidavit Mr. Hade exhibits certain correspondence and emails with Mazars, which form the basis of his assertion/argument that, notwithstanding Clause 5.01(k) of the Mortgage, the respondents have approbated the purported lease and are bound by it.

12. The application for interlocutory reliefs came on for hearing before the High Court on 9th October, 2018. The first, second and third named defendants were not present or represented, although the court in its order notes a letter from the first named defendant in which he appeared to be consenting to orders that the court might make. Mr. Hade was present, and applied to the court for an adjournment. The Transcript at p. 2 indicates that he explained to the trial judge that the Property was "*an emergency home, it's a hostel and its based in Ranelagh and there's fourteen people who are there. They're clients of Dublin City Council. There's also two staff and myself. So, there are seventeen people in all involved in this particular building. I am there since 2015…*". He sought the adjournment "*…just to appoint a legal representative, a barrister, because I didn't expect it to come up today for hearing…*".

13. The trial judge then received Mr. Hade's affidavit, and allowed it to be filed in court. That affidavit was made in the name of "Niall Hade", and the trial judge then made an amendment to the title of the proceedings, substituting "Hade" for "Hayes". The trial judge then addressed the adjournment application, and having listened to both parties refused the application for an adjournment.

14. Having heard the application the trial judge made the following orders: -

    "(1) The Plaintiff be at liberty to amend the title of the within proceedings in respect of the fourth named Defendant to read Niall Hade in lieu of Niall Hayes.

    (2) The Defendants' their servants and/or agents and any other person having notice of the making of this Order be restrained from interfering with the function and office of the second named plaintiff as receiver of the property listed in the Schedule hereto, pending the determination of the within proceedings.

    (3) The first, second and third defendants, their servants and/or agents, or any other person having notice of the making of this Order be restrained from trespassing on or entering upon or otherwise interfering with the property listed in the Schedule hereto pending the determination of the within proceedings.

    (4) The Defendants and each of them be directed to furnish an account of all rents and deposits to include payments from Dublin City Council received by them since 3

July 2015 in respect of the property listed in the Schedule hereto and to pay any such rents and deposits to the second named plaintiff within 14 days from the date hereof.

(5) The Defendants and each of them be directed to deliver up to the second named plaintiff herein all books and records held by each of them relating to the properties listed in the Schedule hereto, including leases and licence agreements within 14 days from the date hereof.

(6) The fourth named defendant to pay to the second named plaintiff, by way of mesne rates a sum of €3,500 per month from the date of this Order pending the determination of the within proceedings.

(7) Reserved costs.

and the Court notes the undertaking of the fourth named defendant to abide by the terms of this Order."

15. It is not in dispute that the intention of this order was not to exclude Mr. Hade from occupation of the property and from running it as a hostel for the homeless, pending the determination of the proceedings, on the basis that pending trial he paid to the Receiver a sum of €3,500 per month in respect of his occupation. Contrary to the wording in para. 4 of the Order as initially perfected, it was not intended that in addition Mr. Hade would have to pay to the Receiver monies received by him from Dublin City Council. That this is so is apparent from a reading of pages 40-42 of the Transcript of the hearing in the High Court.

16. Mr. Hade lodged a Notice of Appeal on 19 October 2018. It is not necessary to recite all the Grounds raised, because not all of them were pursued, but it should be noted that at Ground (c) Mr. Hade expressly raises the error in para. 4 of the Order under appeal, and at Ground (g) he pleads that the trial judge erred in ordering him to pay over all monies received from Dublin City Council since 3 July 2015 to the receiver.

17. In order to correct the error in the order, application was made on behalf of the Respondents to Pilkington J. on 15 November 2018, and pursuant to O. 28, r. 11RSC the Order at para. 4 was amended under the 'slip rule' to read: -

"*4. The Defendants and each of them be directed to furnish an account of all rents and deposits to include payments from Dublin City Council received by them since 3 July, 2015 in respect of the property listed in the Schedule hereto.* ***And the first, second and third defendants*** *to pay any such rents and deposits to the second named Plaintiff within 14 days from the date hereof.*"

Although the application to amend was made *ex parte*, it appears that Mr. Hade was made aware in advance, and had no objection, and indeed it was in ease of him as it was now clear that his obligation and undertaking under the order was to pay €3,500 per

month to the Receiver, and that he did not in addition have to account for the payments to him by Dublin City County.

Following the amendment it was the Respondent's belief that there was no reason for Mr. Hade to proceed with his appeal.

18. I propose to address first the preliminary application on the part of the Bank to join an additional party, and then to address the appeal.

Application to substitute Link ASI Limited for the Bank, or to alternatively join Link ASI Limited to the proceedings.

19. This application was issued by Notice of Motion dated 17 November 2020, and is grounded on an affidavit of Noreen McGovern sworn on 17 November 2020 and a supplemental affidavit sworn by her on 18 November 2020. Although Mr. Hade opposes the application he did not file any replying affidavit.

20. Ms. McGovern's principal affidavit explains why this application is being made. By Transfer of Charge dated 6 December 2019, made between the Bank and Bank of Ireland Mortgage Bank as sellers, and Link ASI Limited as buyer, the sellers, amongst other things, transferred to Link ASI Limited all their right, title, interest, benefit and obligation (both present and future) in the defendants' facility and security documents as set out in the Schedule. These included the Instrument of Charge in respect of Folio 56604L. In this regard the heavily redacted Schedule refers to Instrument no. D2003DN016869D, which is the identification number for the Instrument which is the title document on foot of which ICS Building Society registered its charge on the property comprised in Folio 56604L. No issue is taken by Mr. Hade with the validity or effect of the Transfer of Charge, or with the redactions which Ms. McGovern justifies by reference to (i) commercial sensitivity, (ii) bank and/or client confidentiality, and/or (iii) lack of relevance to the defendants in these proceedings.

21. Ms. McGovern next refers to a Novation Deed dated 6 December 2019 made between the Bank and Bank of Ireland Mortgage Bank as Transferors, Link ASI Limited as Transferee and Simon Coyle as "the Continuing Party", and she exhibits a copy of that deed. Ms. McGovern avers that by this deed the Bank as Transferor and Link ASI Limited as Transferee agreed to novate the receiver/agency agreements therein scheduled to Mr. Coyle. Entry 16 in the Schedule lists the appointment of Mr. Coyle as receiver in respect of the properties the subject matter of the Mortgage dated 24 April, 2003 with the first, second and third named defendants.

22. Mr. Hade objects to this court making any order on the grounds that the Novation Deed names a different party, namely Promontoria Snow Designated Activity Company, as the "buyer". However when the Recitals are read as a whole this objection is seen to be misconceived: -

> "RECITALS

(A) The Transferors and the Continuing Party entered into those deeds of appointment listed in Schedule 1 (the Receiver Agreements).

(B) The Transferors and Promontoria Snow Designated Activity Company (formerly known as Promontoria 2019 SGA Designated Activity Company) (the Buyer) entered into a mortgage sale agreement dated 28 August 2019 (the MSA), pursuant to which the Transferors and the Buyer (or its nominee) have agreed to enter into a novation deed in respect of the Receiver Agreements.

(C) In consideration for the Transferors, the buyer and the Transferee entering into the MSA and the other Transaction Documents to which they are party, the Transferors have agreed to novate the Receiver Agreements to the Transferee (as the Buyer's nominee) pursuant to this Deed and the Transferee has agreed to assume the obligations of the Transferors under the Receiver Agreements with effect from the Effective Date (as defined below).

(D) The Continuing Party consents to the substitution as a party of the Transferee for the Transferors under the Receiver Agreements.

(E) The terms used but not otherwise defined in this letter shall have the same meaning as in the MSA."

23. The fact that the Bank, and Bank of Ireland Mortgage Bank, entered into a Mortgage Sale Agreement on 28 August 2019 with Promontoria Snow Designated Activity Company is not relevant to the present application. What is relevant is firstly that by virtue of the Transfer of Charge dated 6 December 2019 the Bank and Bank of Ireland Mortgage Bank transferred all their right, title, interest, benefit and obligation in the Mortgage directly to Link ASI Limited, and secondly that by virtue of the Novation Deed the Bank and Bank of Ireland Mortgage Bank were substituted by Link ASI Limited as party to the Receiver Agreements, including that under which the Bank had appointed Mr. Coyle as receiver in respect of the property. No more than this was required to effect the complete transfer of the Mortgage to Link ASI Ltd, and to novate the appointment of the Receiver to Link ASI Ltd. Thus in the operative part of the Novation Deed at para. 2.1 it is stated: -

"2.1 The Parties hereby agree, as and with effect from the Effective Date, that the Transferee shall be and is hereby substituted in place of the Transferors as a party to the Receiver Agreements and that the Receiver Agreements shall be treated in all respect as if the Transferee were the original party to the Receiver Agreements instead of the Transferors."

Further, in Clause 2.2 the Receiver agreed to perform and discharge all liabilities and obligations in all respects as if Link ASI Limited were the original party to the receiver agreements instead of the Bank/Bank of Ireland Mortgage Bank.

24. Ms. McGovern exhibits in her affidavit a letter dated 9 December 2019 from the Bank notifying the first, second and third named defendants that their loan facilities and

security had been sold and transferred to Link ASI Limited, and she further exhibits a letter dated 16 December 2019 by which Link ASI Limited notified those defendants of the sale and transfer of their loan facilities and security.

25. I am satisfied that Ms. McGovern has made out a *prima facie* case for the reliefs sought under the Notice of Motion. However two further objections were made by Mr. Hade.

26. The first of these was that the respondents' current solicitors, Fieldfisher, were not on record for the plaintiffs in the High Court. McDowell Purcell Solicitors acted on behalf of the plaintiffs at that time, and indeed continued to do so after the appeal was lodged, and that firm lodged the Notice of Opposition on the Respondent's behalf. However this objection is entirely misconceived as the respondents were perfectly entitled to instruct new solicitors, and in any event Robert McDowell Purcell merged into Fieldfisher with effect from 1 May 2019.

27. The second objection is that if this court makes an order on foot of this application there will be no right of appeal comparable to that which would be available if the application was made in the High Court.

28. It must be borne in mind that the appeal before this court relates only to interlocutory orders, and the action remains to be heard and determined in the High Court. It seems to me that it would be open to Mr. Hade in his defence of the action to raise such factual or legal issues as he may wish in relation to the making of Link ASI Limited a party to the proceedings and in relation to any substantive claim that that company may seek to advance against Mr. Hade in pleadings or at trial.

29. The alternative to this court making an order pursuant to the motion would be to require the plaintiffs to apply for substitution *de novo* in the High Court. The difficulty with that, in light of the Transfer of Charge and Novation, is that for the purposes of enforcement of the interlocutory orders already made the proceedings require to be regularised by the addition of Link ASI Limited as a party, and this needs to be done promptly in light of the injunctive nature of the orders. Further, O. 17, r. 4 gives this court, as it does other superior courts, the power to add a party where "*it becomes necessary or desirable that any person not already a party should be made a party*" arising from any event occurring "*after the commencement of a cause or matter and causing a change or transmission of interest or liability*". Similarly, O. 15, r. 13 empowers this court to join or substitute a party whenever it "*may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter*". I am quite satisfied that it is both necessary and desirable that Link ASI Ltd be joined as a plaintiff to these proceedings at this point in time.

30. Counsel for the respondents has indicated that there would be no objection to this court joining Link ASI Limited as an additional plaintiff, rather than by way of substitution for the Bank. As no case law was opened and no legal argument was addressed by either side as to the desirability, from a legal perspective, of the court merely joining Link ASI Limited rather than substitution, in my view the appropriate Order is an Order pursuant to

O. 17, r. 4 of the Rules of the Superior Courts 1986 (as amended) joining Link ASI Limited as a plaintiff in the proceedings.

The appeal

31. Mr. Hade first sought to appeal the change of his name in the title to the proceedings by the trial judge, and in his written Submission he stated that "*I fail to see how I could have been served court papers under the wrong surname, nonetheless I was present in court.*" This was covered by Ground (e) in the Notice of Appeal. In fairness to Mr. Hade he did not press this point. It cannot succeed. The error in the title to the proceedings had its source in the purported Lease, and Mr. Hade asserted in his affidavit that he was the tenant in that document, and accordingly he had no basis for suggesting that he was not the correct defendant, and that the title should not have been amended accordingly. No issue as to service arose because Mr. Hade was in fact present in court and did not contest that he had been served with the documents.

32. Secondly, Mr. Hade in his written and oral submission sought to argue that the trial judge should have granted him the adjournment which he requested, and that the failure to do so deprived him of due process and breached his right to fair procedures under Art. 6 of the European Convention on Human Rights.

33. Mr. Hade did not appeal the refusal by the trial judge to grant an adjournment. No ground of appeal is addressed to that part of her Order. Mr. Hade therefore cannot be permitted to pursue this argument. Even if he had appealed the refusal to adjourn, a perusal of the Transcript of the hearing in the High Court discloses that the trial judge heard considerable argument from both sides and carefully considered what was advanced before deciding to refuse the adjournment. That was an exercise of discretion with which this court would be very slow to intervene.

34. The primary grounds of appeal (covered by Grounds (d)) advanced by Mr. Hade concern his central arguments that he entered into a valid lease in good faith with the first, second and third named defendants on 1 June 2015, that the Receiver was aware of that lease and affirmed it, that Mr. Hade paid rent directly to the Receiver, and that on 6 July 2015 the Receiver wrote to Mr. Hade stating –

> *"Please note all future dealings in relation to your tenancy will be handled by my office. I am continuing the existing arrangement with regard to your occupation of the property. Please now forward a copy of your Lease to myself along with rent books."*

Mr. Hade relies on further correspondence with the Receiver, including a letter of 8 September 2015 with a 14 day warning letter under the Residential Tenancies Act, 2004, seeking rent, for his argument that the respondents are estopped from denying the validity of the lease. Mr. Hade also relied on email correspondence, some of which was not exhibited and to which objection was taken by counsel for the respondents.

35. In support of his argument that the lease was valid and subsisting and had been approbated by the Receiver, and that no injunction should have been granted, Mr. Hade called in aid passages from *Kennedy and O'Kelly v McGuinness* [2020] IECA 288, and in particular paras. 47 and 70 in the concurring judgment of Collins J., and para. 28 of the judgment of Dunne J. in *N17 Electrics Limited (in Liquidation): Fennell and ACC Bank plc. v N17 Electrics Limited (in Liquidation)* [2012] 4 IR 634, at p. 647.

36. In my view there is no occasion on this appeal for the court to analyse to adjudicate on these arguments, because they simply do not arise on this appeal, in respect of this appellant. It will be recalled that the Order (as amended) injuncted the first, second and third defendants only from trespassing or entering on the property, and that part of the order did not extend to Mr. Hade. In fact the entire interlocutory Order was predicated on Mr. Hade remaining in occupation, and paying a monthly sum of €3,500 to the Receiver pending the determination of the proceedings. This followed an acceptance on the part of the plaintiffs in the High Court that they were not pursuing an injunction directed against Mr. Hade's continued occupation of the Property pending trial, on the basis that he was running a hostel for homeless people under contractual arrangement with Dublin City Council, and on the basis that he would pay to the Receiver a sum equivalent to the rental identified in the purported lease pending trial. The Transcript at p.37 line 12 records Counsel for the respondents saying to the trial judge "Given the attitude that Mr. Hade has taken today, I think the Court would be in a position to limit that [the injunction in relation to trespass] to the first, second and third named defendants...".

37. Given the level of agreement between the plaintiffs and Mr. Hade in the High Court it was not necessary for the trial judge to express a view on the validity or otherwise of the purported lease *as between the plaintiffs and Mr. Hade*. Furthermore, it seems to me that the trial judge did not in fact come to a view as to the validity or otherwise of the lease so far as Mr. Hade is concerned. The trial judge did, however, as she was required to do, come to a preliminary view on validity in the context of the application for injunctive relief against the first, second and third named defendants. Arguably the orders sought against them were mandatory in nature, and therefore the onus on the Bank/the Receiver was to satisfy the court that there was a strongly arguable case against them. The Transcript at page 38, line 32 records the trial judge as stating –

> "With regard to the nature of the proceedings, in my view, there are very serious questions that can be raised as to the efficacy of the Lease and the entitlement *and I say this not against Mr. Hade, the fourth named defendant, who is present in Court and for whom one can have a certain sympathy, but I think the capacity of the other defendants to execute a lease in the manner in which they did and the timing which they did and failing to obtain the consent which they were required to do, does in my judgment mean the Lease is invalid and accordingly that as a strict matter of law, a trespass now arises."*[Emphasis added].

38. In an exchange which I had with Mr. Hade it became apparent that his primary concern in this appeal arose from this passage which led him to believe that the trial judge had

determined the issue of the validity of the purported lease, and this is expressly pleaded in Ground (e). What Mr. Hade may not have appreciated is that the findings and observations of a trial judge at the hearing of an interlocutory injunction application are necessarily provisional in nature, and cannot be relevant to or have any bearing on the plenary hearing of the action and the consequent decision of the court. As I was at pains to point out to Mr. Hade, the issue of whether the purported Lease dated 1 June 2015 is valid, or whether it is void not having been executed with the prior consent of the mortgagee as required by Clause 5.01(k), is likely to be front and centre when these proceedings come for plenary hearing, and Mr. Hade will be entitled in pleadings and at hearing to present arguments and evidence to support his contention that it is valid and/or has been approbated by the Receiver or the Bank so that they are bound by it. While the interlocutory orders will doubtless be adverted to as part of the procedural history, neither they nor the Transcript will form part of the evidence, and no weight can be attached to any views expressed by the trial judge in the course of the interlocutory hearing and ruling.

39. In a similar vein Mr. Hade objected to the description in Order 6 of the monthly payment as being "mesne rates", on the basis that this prejudged his argument as to the validity of the Lease – although no specific Ground of Appeal was addressed to this. The term "mesne rates" is not a statutory term or a term of art. It is generally used by lawyers to differentiate a rent due or paid under a lease or tenancy agreement from a charge or payment in respect of occupation where no tenancy is in existence, for example, where a tenant overholds after termination of the tenancy. The term is often deployed to avoid an admission or implied acceptance that a lease or tenancy exists or is continuing. However it does not mean that a particular payment falls to be characterised as rent, or as not-rent. It simply denotes a sum in respect of occupation, and that is the sense in which it is deployed in Order 6. The description in the Order of the sum of €3,500 per month that Mr. Hade must pay to the Receiver pending the determination of the proceedings certainly does not predetermine whether that money is or is not rent, or, by extension, that the purported lease is invalid. Mr. Hade's fears that that might be so are unfounded.

40. In Grounds (a) and (b) Mr. Hade challenged the *locus standi* of the Receiver to pursue these proceedings on the basis that the Mortgage was made between ICS Building Society and the first, second and third defendants, and the Bank was not a party, and he alleged that there was no contractual nexus between the Bank and the Receiver. However the S.I. 257/2014 is *prima facie* evidence of transfer of the Mortgage from ICS to the Bank, and likewise the Deed of Appointment dated 3 July 2015 is prima facie evidence of a valid appointment by the Bank of Mr. Coyle as Receiver over the Property. Insofar as Mr. Hade was also suggesting that because Mr. Coyle is no longer an employee of Mazars the appointment is no longer valid, that argument must also fail as *prima facie* the Deed of Appointment appoints Mr. Coyle personally as Receiver and such appointment is not dependant on him being or remaining an employee or consultant in Mazars.

41. Grounds (c), (g) and (h) concern Dublin City Council's arrangement with Mr. Hade, and ceased to be relevant once the Order was amended to make it clear that his payment obligation pending trial was limited to the €3,500 p.m. to the Receiver.

42. In his written submissions Mr. Hade at para. 9 raises a further argument that the Deed of Appointment of the Receiver is over Folio 56604L only, and not Folio 56605L, which comprises part of the property. This was not a Ground of Appeal, and was not pursued in oral argument by Mr. Hade. This may be because, according to para. 29 of the respondents' Submission, the Receiver was appointed over both Folios, and Folio 56604L represents the building of 7A Oakley Lodge from the entrance point to the rear of the property.

43. Accordingly I am not satisfied that in respect of any of the grounds of appeal or arguments pursued by Mr. Hade that he can show that the trial judge erred in law or in fact in making the interlocutory orders. Mr. Hade's real concern in pursuing this appeal derived from his misplaced belief that the trial judge in the course of the hearing or in her orders had in some way prejudiced the case that he seeks to advance that the Lease dated 1 June 2015 is valid. My exchanges with Mr. Hade and this judgment should dispel his concerns. However it must be concluded that his persistence with this appeal was not justified and I would dismiss the appeal.

44. In the course of the hearing before this court it emerged that certain of the payments of €3,500 due each month by Mr. Hade to the Receiver may be outstanding, and in particular Mr. Hade accepted that no payments have been made since February 2020. Mr. Hade explained this by reference to a letter dated 12 February, 2020 from Keenan Property Management Limited advising that Tom O'Brien and Hilary Larkin (of Mazars) had been appointed Receivers of the property, and that future dealings with his tenancy would be handled by Keenan Property Management. However that letter was promptly followed by a further letter from Keenan Property Management Limited dated 20 February 2020 apologising for the letter that had been issued to him and indicating that it had been issued in error. Ms. McGovern in her supplemental affidavit sworn on 18 November 2020 at para. 14 exhibits this correspondence and confirms that the letter of 12 February, 2020 issued in error, and in para. 15 she confirms that Simon Coyle remains the Receiver appointed over the property. If Mr. Hade entertained any doubts about whom he is obliged to pay the €3,500 p.m. there can now be no doubt. Whilst this court is not called upon to make any adjudication in relation to this issue it should be emphasised that Mr. Hade remains bound by para. 6 of the order of Pilkington J. of 9 October 2018 to pay the sum of €3,500 per month to the Receiver from the date of that order until the determination of the proceedings, and as that order has not been varied or rescinded it is a continuing legal obligation that is further underpinned by the undertaking given by Mr. Hade to the court that is noted on that Order. Mr. Hade would be well advised to comply with his obligations or he runs the risk that enforcement proceedings will be taken against him in the High Court.

Costs

45. In relation to the costs of the application to join Link ASI Limited, in my view there should be no order as to the costs of the motion. It became necessary because of the assignment to Link ASI Limited, through no fault of Mr Hade, and although he opposed the application his opposition was, in truth, minimal and did not add materially to the length or complexity of the application.

46. In relation to the costs of the appeal, section 169 of the Legal Services Regulation Act, 2015 applies, and the general rule is that a party who entirely succeeds in the matter is entitled to their costs. Because of the error in the order I am of the view that Mr. Hade was justified in lodging a Notice of Appeal *in the first instance*, at least in respect of the grounds related to the Dublin City Council payments. However after the Order had been amended to properly reflect the spoken Order and intentions of the trial judge, there was no further justification for Mr. Hade pursuing the appeal. In my view the respondents have entirely succeeded in the appeal, and I would therefore propose that the respondents be entitled to their costs from Mr. Hade in respect of the appeal insofar as they arose after the date of the amendment of the High Court Order, being 15th November 2018, such costs to be adjudicated in default of agreement. However as this is an appeal in respect of an interlocutory matter and the court must assume that pleadings will be exchanged and that the matter will proceed to plenary hearing and ultimate determination in the High Court, and as the court cannot and should not attempt to predict the outcome of the plenary proceedings or any orders as to costs that might be made in those proceedings, it is appropriate that there should be a stay on this costs order pending the determination of the proceedings in the High Court.

47. Should either party wish to seek different orders in relation to the costs of the motion or the appeal they should apply to the office of the Court of Appeal within 14 days from the date of electronic delivery of this judgment and the court will list the matter for argument accordingly, but the parties should be aware that there may be further costs implications arising from such a hearing. Should neither party request a costs hearing the orders in relation to costs proposed above will be perfected.

***Donnelly J and Collins J are in agreement with this judgment and the orders* proposed.**