



THE COURT OF APPEAL

UNAPPROVED

Record Number: 2024 131
High Court Record Number: 2016 4510P
(2017/173COM)
Neutral Citation Number [2024] IECA 264

Noonan J.

Binchy J.

Pilkington J.

BETWEEN/

PATRICK O'CONNOR

PLAINTIFF/APPELLANT

-AND-

PROPERTY REGISTRATION AUTHORITY OF IRELAND

DEFENDANT/RESPONDENT

JUDGMENT (*Ex Tempore*) of Mr. Justice Noonan delivered on the 5th day of November, 2024

1. The appellant, Mr. O'Connor, seeks to appeal against the refusal of the High Court to grant him leave to institute proceedings, Mr. O'Connor being the subject of an *Issac Wunder* order. There is a long history of litigation in this case stretching back over a decade. It originates in various bank loans taken out by Mr. O'Connor against the security of a number of properties and when the loans went into default, proceedings were issued by the bank concerned for judgment. Receivers were appointed pursuant to the relevant mortgages and debentures over the properties provided as security. Since at least 2015, Mr. O'Connor has

been litigating against various parties, and in particular the receivers, concerning their entitlement to act. I do not propose to summarise in any detail the factual background as it is comprehensively set out in the detailed written judgment delivered by O'Donnell J. on the 28th February, 2024.

2. The central feature of this appeal is an order made by the High Court on the 9th October, 2017 by McGovern J. in the following terms:

*“and **IT IS ORDERED** that the plaintiff be restrained from instituting any proceedings against any person whomsoever that directly or indirectly concerns any of the properties the subject of the said proceedings (the ‘**Properties**’) or the borrowings the subject of the said proceedings (the ‘**Borrowings**’) without prior leave of the President of the High Court, or some other judge nominated by him, such leave to be sought by an application in writing addressed to the Chief Registrar of the High Court, which properties and borrowings are listed in the Schedule to this Order.”*

3. It is clear that the proceedings that Mr. O'Connor now seeks to institute do indeed concern the properties and the borrowings that were the subject matter of all of the previous proceedings that have taken place herein, being some six in number, and are the subject of the IW order. Indeed, the very fact that Mr. O'Connor applied to the High Court for leave to institute these proceedings constitutes a recognition by him that they are captured by the terms of the restraining order. That is clearly so also in circumstances where the new proceedings that Mr. O'Connor seeks to institute constitute a further challenge to the receivership and the receivers' actions on the basis that one of the two receivers, Mr. Cotter, retired in 2020 and Mr. O'Connor seeks to contend that the remaining receiver, Mr.

Charleton, can therefore no longer act alone, rendering invalid everything that has happened since that time.

4. The High Court concluded that these proposed proceedings are the clearest abuse of process, are frivolous and vexatious and have no prospect of success. Further, the High Court held that the proceedings do not comply with the Rules of the Superior Courts insofar as they make wide-ranging allegations of misrepresentation, fraud, breach of trust, and undue influence without any particulars being furnished. In any event, the judge concluded that there was no basis for the suggestion that the power of Mr. Charleton to continue to act following Mr. Cotter's retirement could lawfully be impugned by Mr. O'Connor. He accordingly refused the application.

5. It is against that refusal that Mr. O'Connor appeals and it is immediately evident from his lengthy and prolix notice of appeal that he wishes this Court to embark on a consideration of his application *de novo* on the merits. However, there is a fundamental problem confronting Mr. O'Connor in this appeal in that he purports to bring it without any leave from the High Court. The issue thus arises as to whether it is competent for Mr. O'Connor to bring such an appeal without permission when he is subject to an *Issac Wunder* order and for that reason, this Court directed that the parties be circulated with the recent judgment of this Court by Costello J., as she then was, sitting alone in *Morgan v The Labour Court* (Unreported, Court of Appeal, 5 July 2024).

6. This was also a case of a litigant in person seeking to appeal an order of the High Court whilst she was subject to a litigation restraint order in terms similar to that arising here. In the course of dismissing the appeal for a number of reasons, Costello J. said:

"17. For these reasons, I would dismiss the appeal. I would also add that I am of the view that Ms. Morgan required leave of the High Court even to bring this appeal.

To construe the order of Ferriter J. otherwise would be clearly to frustrate the purpose of the order. Therefore, bringing this appeal without first seeking and obtaining the leave of the High Court to do so, was itself a breach of the order and that in turn amounts to an abuse of process.

18. Therefore, I would strike out the appeal on the basis that it is an abuse of process and is frivolous and vexatious. Separately, I will also strike out the appeal on the basis that it was brought in breach of the terms of the Issac Wunder Order to which it was subject.”

7. I agree entirely with these views. The whole purpose of an *Issac Wunder* order is to protect parties from being vexed with repetitive abusive litigation. As has often been said, it operates not as a bar to bringing proceedings but as a filter to capture further unmeritorious claims which are oppressive to the responding parties.

8. It follows that a party subject to a litigation restraint order who seeks permission to institute proceedings may not appeal a refusal of such permission without the permission of the relevant court identified in the restraining order. Were it otherwise, the whole purpose of the restraining order would be frustrated to a significant extent.

9. I am therefore satisfied that this appeal may not be maintained by Mr. O’Connor without the leave of the High Court and must therefore be dismissed. While that is dispositive of this appeal, I would also express the view that the judgment of the High Court was entirely correct and the proposed proceedings are the plainest abuse of process.

10. I would therefore dismiss this appeal.

[Binchy J.]: I have listened carefully to the judgment just delivered by Mr. Justice Noonan and I am in full agreement with it, and I have nothing to add.

[Pilkington J.]: I too have listened very carefully to the judgment just delivered by Mr. Justice Noonan and like my colleague Mr. Justice Binchy, I am in complete agreement with it and the orders that he proposes.