



APPROVED

NO REDACTION NEEDED

THE COURT OF APPEAL
CIVIL

Neutral Citation Number: [2025] IECA 34

Appeal Number: 2024/223

Allen J.

Meenan J.

Hyland J.

BETWEEN/

OSSORY ROAD ENTERPRISE PARK LIMITED

PLAINTIFF/RESPONDENT

- AND -

DECLAN ROGERS, TOM HARTY

AND

ROGERS RECYCLING LIMITED

DEFENDANTS/APPELLANTS

EX TEMPORE JUDGMENT of Mr. Justice Meenan delivered on the 7th day of February, 2025

1. I also agree with the judgment just delivered by Allen J., but there is an aspect of this appeal which I find very troubling. In the course of the hearing in the High Court, Mr. Rogers claimed that there was a lease with a tenant as of January 2014. This lease would have required a letter of consent from AIB (the mortgagee). Initially, Mr Rogers did not have

the letter of consent however subsequently did produce a letter for the Court, purportedly signed by a Mr. Foley.

2. Evidence was given by Mr. Foley, who was cross-examined on the part of Mr. Rogers, that the letter was genuine. Having heard the evidence, the Trial Judge concluded that the letter was forged by Mr. Rogers, clearly designed to put false evidence before the Court with the view to obtaining a favourable outcome. The Trial Judge concluded that, regrettably, the only sensible conclusion was that Mr. Rogers fabricated this document and had then given deliberately untruthful sworn evidence about it.
3. This finding in fact was not appealed. There are references in the notice of appeal to pleading points, and to the Trial Judge too readily reaching the conclusion, but there is not in fact a direct appeal on the finding itself. When asked about the absence of references to an appeal in the written submissions, counsel for Mr. Rogers indicated that there was not time to do so.
4. Telling a lie under oath is a very serious matter and can be the subject of criminal proceedings. Forging a document and seeking to rely upon it in evidence is even more serious. The preparation of a forged document indicates a deliberate ongoing intention to mislead and lie, which is made all the worse when it is done under oath. This indicates to me a conscious decision on the part of Mr. Rogers to undermine the administration of justice with the view to visiting an injustice on the opposing party. This did not happen here because of the evidence of Mr. Foley. The fact that it did not actually happen in no way diminishes the culpability of Mr. Rogers. One can only speculate as to what might have happened if, for some reason, Mr. Foley was not available to give evidence.
5. Unfortunately, forgery and lying under oath was not the only evidence of gross dishonesty on the part of Mr. Rogers. In the course of the hearing, I referred to para. 74 of the judgment of the High Court which refers to the fact that Mr. Rogers was receiving rent despite an

order of the High Court from a tenant. Initially Mr. Rogers denied this, however, it turned out the tenant was in contact with Mr. Rogers via WhatsApp. Mr. Rogers was required to give up his phone and upon examination of that phone it turned out that contrary to what Mr Rogers had said, he was actually in contact with the tenant. Unfortunately, Mr Rogers was perfectly prepared to tell lies until he was caught red-handed when he had no option other than to tell the truth.

6. The following conclusions can be reached about Mr. Rogers:
 - a) To further his interests, he is prepared to, and does lie under oath;
 - b) he is prepared to, and does forge documents, with a view to misleading the Court;
 - c) by his actions he consciously and deliberately undermines the administration of justice.

7. So, the question I have in my mind, is whether this Court should entertain an appeal from a litigant such as Mr. Rogers or should they do so only on condition. For example, some provision is made for the security of costs. Access to the courts is a constitutional right but of course, it is not an absolute one. However, it seems to me that given his dishonest conduct in the High Court, Mr. Rogers is not entitled to be treated in the same way as a litigant who has respect for the administration of justice and is conscious of the duty to be honest in the evidence given. The whole administration of justice is dependent on litigants and witnesses being honest. I am not sure what the answer to the question is, which I have posed, and indeed I would not attempt to answer it without hearing submissions from both parties. As this appeal has concluded, that is not going to happen in the context of this appeal. But I am strongly of the view that were similar circumstances to arise, it is an issue that ought to be addressed.