[2024] IEHC 209

THE HIGH COURT

[2023 No. 120 JR]

BETWEEN

DAVID DORAN

APPLICANT

AND

TAILTE ÉIREANN

RESPONDENT

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 12th day of April, 2024.

INTRODUCTION

1. This is the judgment of the court in a contested application for leave to apply for judicial review. It arises in the context of a dispute about the acquisition of a fee simple interest under the Ground Rents legislation. The applicant, Mr. Doran was the lessor under a long lease of a property in Stillorgan, County Dublin ("*the Property*"). The respondent at the material time was the Property Registration Authority of Ireland ("*the PRAI*"). By operation of statute, the respondent is now Tailte Éireann.

2. In these proceedings, Mr. Doran, who is a litigant in person, seeks to challenge an arbitration award made by the PRAI on 27 April 2017 (Application 17GR00419) and the consequent issuing of a vesting certificate on 4 April 2022. The arbitration award decision resulted in the applicant in that procedure, Mr. Allison, acquiring the right to acquire the fee

simple interest in respect of the Property, while the vesting certificate was made in favour of his successor in title, Ms. O'Dwyer. Neither Mr. Allison nor Ms. O'Dwyer were parties to this application. Mr. Doran seeks leave for the judicial review proceedings because of what he has described as flaws in the processes adopted by the PRAI. The respondent says that leave should not be granted in this situation specifically because the application has been made well outside the time available to challenge the decisions of the PRAI as provided for in Order 84 of the Rules of the Superior Courts ("*the RSC*"), as amended.

3. For the reasons set out in this judgment, I am refusing the application for leave on the basis that the application manifestly is well out of time. In that regard, I have found that any judicial review proceedings ought to have been commenced within three months from the date of the initial arbitration award. I have also found that the making of the vesting certificate was an inevitable consequence of the arbitration award, and that the challenge to the vesting certificate amounts to a form of collateral challenge to the preceding process. If I am wrong about that approach to the case, I am in any event satisfied that the challenge to the granting of the vesting certificate was also out of time. Moreover, while my decision is based on the delay issues, Mr. Doran faces the difficulty that his substantive claims appear to be based on a misapprehension of the statutory scheme, and I have considerable doubts if the substantive claims, as formulated, could satisfy the threshold for a grant of leave.

PRELIMINARY ISSUE - CHANGE OF RESPONDENT'S NAME

4. At the outset of the hearing, counsel for the respondent informed the court that the Property Registration Authority of Ireland has been dissolved and its functions transferred to Tailte Éireann and that this body should be reflected as the respondent in the title of the proceedings. It is clear from section 32(2) of the Tailte Éireann Act 2022 that:-

"*(2) Any legal proceedings pending immediately before the establishment day to which a dissolved body…is a party, that relate to a function of the dissolved body…shall be continued, with the substitution in the proceedings of Tailte Éireann, insofar as they so relate, and the proceedings shall not abate by reason of such substitution."*

5. In the premises, it is clear that the substitution sought by the respondent is required as a matter of law and I made the necessary order.

THE THRESHOLD FOR LEAVE

6. In *O'Doherty v. Minister for Health* [2022] IESC 32, [2022] 1 IRLM 421, the Supreme Court reviewed the legal test governing an application for leave to apply for judicial review and confirmed that the threshold test applies irrespective of whether the application for leave is made *ex parte* or is made on notice to the other parties. That test was described, as follows, by O'Donnell C.J. at para. 39:-

"The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges made differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability; it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a likelihood of success. Any such language obscures the nature of the test and may on occasion may lead to misunderstanding, appeal and consequent delay."

7. However, as noted by Simons J. in *Tobin v. Limerick City and County Council Ireland and the Attorney General* [2023] IEHC 626 the approach regarding the threshold for a grant of leave differs from the approach to be taken when a time limit issue arises. In that situation, if it obvious that an applicant is making a leave application out of time, then the judge hearing the leave application may properly refuse leave on that basis.

THE APPLICATION

8. On 24 April 2023 this court granted the applicant leave to file and serve a notice of motion seeking leave to apply by way of application to judicial review on notice to the respondent. This was where the initial *ex parte* application was made to the court on 13 February 2023. Mr. Doran is a litigant in person; the papers he prepared in connection with this application were not presented in the way one would ordinarily expect. As a consequence, with the agreement of Mr. Doran, the main set of papers were prepared by the respondent, and the court is very grateful for the co-operative approach adopted by the parties in that regard. Mr. Doran presented his arguments with coherence, care and courtesy. Nevertheless, it appears to the court, as will be set out in more detail hereunder, that the case is brought so far out of time that this in of itself is a reason to refuse leave. In order to assist in understanding the case that he sought to make I have appended to this judgment a note of the reliefs that he sought.

9. As is set out in the grounding papers, Mr. Doran holds ground rents in respect of a number of properties in Stillorgan, County Dublin. When one of the property owners, Mr. Allison, sought to acquire the fee simple under the relevant legislation, this was opposed by Mr. Doran on the basis that he contended that Mr. Allison had not paid rent on the property for approximately 30 years. The application by Mr. Allison was initiated in May 2017, and this triggered a considerable amount of correspondence passing between Mr. Doran and the PRAI

which culminated with the PRAI making an award in favour of Mr. Allison in December 2017. Thereafter, Mr. Doran stated that he experienced difficulty in obtaining information in relation to the award from the PRAI, and that he applied to the Circuit Court for an extension of time to appeal the award. There was some confusion in relation to the manner in which the appeal was dealt with. It seems clear, however, that Mr. Doran applied to the Circuit Court for an extension of time to appeal and this application was unsuccessful.

10. At the hearing of this application, Mr. Doran stated that he was not seeking to relitigate or set aside the award but rather was looking at the fairness of the procedure adopted. In that regard his primary concern, as far as I could understand it, was that he wanted the court to examine the procedures utilised by the PRAI leading to the awards that were under challenge. To some extent, Mr. Doran appeared to be primarily concerned with the fact that when an award was made by the PRAI there was a limit to the amount of arrears that could be addressed in the award. This situation is regulated by the Statute of Limitations. However, Mr. Doran has not sought to challenge or raise any issue in these proceedings regarding the constitutionality of the awards process operated by the PRAI. Nevertheless, he felt a sense of grievance that it was not possible for him to recover the full amount of the rent that he contended had been unpaid for approximately 30 years. In addition, Mr. Doran sought to argue that the senior official in the PRAI who made the award that he wished to challenge was not properly qualified as an arbitrator. No good or sufficient explanation was set out for the contention that the arbitrator was not entitled to act as such.

11. In relation to the question of delay, Mr. Doran accepted that he had begun the process of appealing to the Circuit Court, but he stated that he was mainly concerned with seeking to obtain a proper response to his concerns from the PRAI and that he chose to seek to initiate the

judicial review proceedings following the granting of a vesting certificate for the successor in title of Mr. Allison. He stated that the eventual application for leave to apply for judicial review, which had been made to the High Court on 13 February 2023, was within time because he had been in correspondence with the PRAI and did not receive what he considered to be a final conclusive response until 11 November 2022.

12. Mr. Doran was satisfied that the booklet of documents prepared by the respondent contained the relevant background documentation which had been referred by him in his proceedings. I have considered those documents in detail in order to understand the background to the application and to understand the points made by Mr. Doran. I will describe below the history of the contested process by reference to the extensive contemporaneous documentary evidence. Before that, I will set out the basic legislative structure addressing applications to acquire the fee simple in dwelling houses. As will be seen, the Oireachtas intended that once the arbitration part of the process was concluded – whether by the making of the award and its acceptance, or following an appeal to the Circuit Court – the issuing of a vesting certificate to the original applicant or a successor in title is not a process that involves the PRAI exercising a discretion. In addition, while the term "arbitration" is utilised, this does not mean that the process fully resembles, for instance, a commercial arbitration. The process is governed by its own rules and is relatively restricted in terms of the issues that have to be resolved and the manner in which those issues are to be addressed.

THE LEGISLATIVE STRUCTURE

13. Under section 20 of the Landlord and Tenant (Ground Rents)(No. 2) Act, 1978 ("*the Act of 1978*"), where a person who is entitled to acquire the fee simple in a dwelling house by virtue of Part II of the Act of 1978 has the consent of every necessary party to the conveyance

to him of the fee simple free from incumbrances, he may to apply to that effect to the PRAI to vest the premises in him under section 22 of the Act of 1978. Where that consent is not forthcoming, section 21 of the Act of 1978 provides that a person who claims to be entitled to acquire the fee simple in a dwelling house may apply to the respondent to have the premises vested in him under section 22 and shall serve notice of the application upon the immediate lessor. As provided for in section 21(3) of the Act of 1978, the respondent is required to determine the application by way of arbitration, and in that regard the provisions of the Landlord and Tenant (Ground Rents) Act, 1967 ("*the Act of 1967*") apply. It is clear from the legislation, and in particular section 21(5) of the Act of 1978, that the Oireachtas intended in the first instance that if a party was unhappy with an arbitration award they ought to appeal the award, order or other decision of the respondent to the Circuit Court.

14. Significantly, section 22 of the Act of 1978 provides as follows:-

"*22. - (1) Where –*

(a) the [respondent] *is satisfied that an application under section 20 has been duly made, or*

(b) the [respondent] *as arbitrator or the Court on appeal is satisfied that the applicant under section 21 is entitled to acquire the fee simple,*

the [respondent] *shall, subject to subsection (2) issue a certificate (in this section referred to as a "vesting certificate") which shall, subject to subsection (3) operate to convey free from incumbrances the fee simple and any intermediate interests in the dwellinghouse on the date specified in that behalf in the certificate.*

(2) Before issuing a vesting certificate the [respondent] *shall satisfy* [itself] *that the purchase price has been paid or deposited with him, that the prescribed fees have been*

discharged and that rent for the dwellinghouse (other than arrears an action for the recovery of which is statute barred) has been paid up to date.

(3) The vesting certificate shall be deemed to be a conveyance on sale for the purposes of sections 24 and section 25 of the Registration of Title Act, 1964 (which provide for the extension of compulsory registration of ownership) and shall be deemed to be an instrument in the prescribed form for the purposes of section 51 of that Act (which provides for the transfer of registered land)."

15. As noted by Professor Wiley in *Irish Landlord and Tenant Acts: Annotations, Commentary and Precedents* (Bloomsbury Professional 2015) at p. 335, "[t]*he vesting certificate has sweeping effect. It conveys all relevant interests to the applicant free from all incumbrances. It affects interests of all persons, even those who are unknown, under disability or simply not joined. Only interests which are saved by the legislation itself, such as certain covenants (s. 28 of this Act) and mortgages (s. 29) will survive."*

16. It can also be noted that if the applicant or beneficiary of an award dies during the proceedings or there is a transmission or change of interest before the vesting, the proceedings may be continued by and in the name of the applicant's personal representative or successor in title (see Article 10 of the Landlord and Tenant (Ground Rents)(No. 2) Act, 1978, Regulations, 1978, and the notes contained in them).

THE DOCUMENTARY EVIDENCE

17. From the documents it appears that Mr. Allison made an application to the PRAI pursuant to the provisions of the Act of 1978 for vesting by arbitration. The application was made using a Form B ground rents application form. Shortly prior to that, pursuant to section

21(1) of the Act of 1978, Mr. Allison had served a notice of intention to apply for the fee simple on Mr. Doran on 27 April 2017. Lodgement of the documents was noted by the PRAI on 21 June 2017.

18. On 25 May 2017, Mr. Doran had written to the solicitors for Mr. Allison requesting a statutory declaration from Mr. Allison indicating whether there have been any changes or additions to the property since June 1962 other than those covenanted to be erected on the site. By letter dated the same date, Mr. Doran wrote to the PRAI noting his view that some of the lease covenants may not have been complied with by Mr. Allison which may have an effect on the purchase of the fee simple interest, and he requested that he be involved fully in the process to be undertaken.

19. On 7 September 2017, the PRAI wrote to Mr. Doran noting the application and stating that the application may be proceeded with unless good cause to the contrary was shown within ten days from the receipt of the notice.

20. Mr. Doran responded to the PRAI on 16 September 2017 with a series of objections. These were grouped under the headings: Breach of Covenants, Vesting of the Property, Statute of Limitations, and Constitutionality. Effectively, Mr. Doran was asserting that, where Mr. Allison had breached covenants for a considerable period of time, any vesting of the fee simple "*free from incumbrances"* would interfere with his ability to make a claim in respect of the alleged breaches of covenant. The letter also noted that the limitation within the legislation on restricting arrears of rents by reference to a six-year formula did not erase his tenant's obligations to pay the arrears but rather "*makes it difficult to collect"*.

21. On 7 November 2017, the PRAI wrote to Mr. Doran noting that he had not provided details of any alleged breaches, and that a breach of covenant usually is not a good ground for objection to an application. Secondly, the PRAI noted that it was obliged to operate within the constraints of the Statute of Limitations with regard to the enforcement of rent arrears. The PRAI asserted that it did not have a role to comment on the constitutionality of the Ground Rents legislation and in that regard directed Mr. Doran to the Department of Justice and Equality. Finally, the authority noted that the manner in which an award was calculated is provided for in section 7 of the Landlord and Tenant (Amendment) Act, 1984 and section 7 of the Act of 1978, and that the authority will apply the law. Mr. Doran responded to that letter on 23 November 2017 with a series of comments rejecting the approach adopted by the authority.

22. On 21 December 2017, the PRAI made an arbitration award in favour of Mr. Allison in respect of the Property and setting a purchase price in accordance with the legislative formula. Thereafter, Mr. Doran engaged in correspondence with the PRAI seeking information in relation to the award, and certain separate matters. It would not be unfair to characterise the correspondence that passed between Mr. Doran and the PRAI after 28 December 2017 as being marked by an increasing frustration on Mr. Doran's part with what he perceived to be a lack of responsiveness from the PRAI.

23. It appears that on 25 January 2018, Mr. Doran issued a motion in the Circuit Court in Dublin seeking an order extending the time for service and lodgement of a Notice of Appeal against the award made on 21 December 2017. The application was grounded on an affidavit sworn by Mr. Doran on 25 January 2018. Having set out the history of his interactions with the

PRAI, Mr. Doran stated that he had difficulty accessing information from the PRAI but that he was particularly concerned with:-

> "[t]*he basic facts, the circumstances surrounding them, the identity of the Arbitrator, the appointment of the Arbitrator, procedures followed by the Arbitrator, including the exclusion of certain matters in the PRA's consideration of the submissions and, in particular, the final conclusion it or the Arbitrator arrived at, were of particular concern. Based on this evaluation, I made a decision to appeal the award."*

24. Mr. Doran's affidavit was unequivocal that he intended to proceed with an appeal. There is a certain degree of confusion about what transpired in relation to Mr. Doran's Circuit Court appeal. What is clear is that considerable correspondence passed between him and the PRAI concerning the status of the appeal. On 19 November 2018, the PRAI wrote to Mr. Doran requesting an update on the position and details of the proceedings if any had taken place. That request was made in the context of the vesting certificate part of the process, which was on effective hold at that point.

25. In his reply, Mr. Doran informed the PRAI that he had commenced the appeal process but had delayed the proceedings to secure legal representation. He noted that counsel had been engaged, but that he was satisfied that he had legal advice to back up his various submissions to the PRAI. Finally, he noted that he had sought to settle matters with Mr. Allison and had given him until the end of the year to complete matters.

26. On 27 November 2018, the PRAI sought a record number for the Circuit Court proceedings and noted that, if they were not supplied with all the required information, the stay

that they had placed on various pending applications including the application concerning Mr. Allison would be lifted and the applications would be dealt with.

27. On 18 December 2018 (one year after the arbitration award) Mr. Doran provided a Circuit Court record number to the PRAI. Further correspondence passed between the parties seeking updates in relation to the Circuit Court proceedings, and on 5 February 2019 Mr. Doran informed the PRAI that his application had been struck out in the Circuit Court. At that stage he stated he had "*more or less arrived at a decision not to pursue the appeal to the Circuit Court at this time*" but requested more time to consider his position.

28. On 15 February 2019, the PRAI wrote to Mr. Doran and explained the breakdown of the award that was they expected to be lodged in their office and how he could apply to have the purchase monies/rent arrears due to him paid out.

29. On 18 April 2019, Mr. Doran wrote to the chairman of the Property Registration Authority. That letter set out a series of concerns in relation to the manner in which Mr. Doran considered his dealings with the PRAI had been managed. In that letter, Mr. Doran stated that his primary concern was a policy issue and "*the scandal that might be caused if one of our public bodies with a Quasi-judicial role, charged with safeguarding land ownership,"* was revealed to make unlawful judgments resulting from defective procedures. Of significance for this application, are the following two observations made by Mr. Doran. First, he stated:-

> "*The basis of my observations is set out in some detail in the enclosed draft affidavit. I had prepared this draft in an attempt to seek judicial review. I have learned that the costs of doing so will run into six figures. I cannot afford such a significant outlay so I*

am writing in the hope and belief that the Authority may be able to rectify matters sufficiently to obviate the need for any further action by me."

Second, towards the conclusion of the same letter Mr. Doran stated: -

"It is my firm belief and the legal advice I have received, that had I proceeded to the High Court, the likelihood is that the three recent awards made against me would have been quashed by the court. If your internal investigation reaches a similar conclusion, then down the road, we will need to work out how that might be dealt with. Again, I reiterate that this is a secondary concern and you should treat it that way."

30. Following correspondence from the solicitors for the successor in title to Mr. Allison, and the lodgement of various of documents and the payment of rent arrears, the PRAI issued a vesting certificate to Ms. O'Dwyer (Mr. Allison's successor in title) dated 4 April 2022. A notice was sent to Mr. Doran on the same date informing him of the development and informing him of the manner in which he could recover the purchase price.

31. Mr. Doran did not communicate with the PRAI on foot of that notification until 3 June 2022. In that letter, he argued that he was not aware or made aware of any proceedings that involved Ms. O'Dwyer and contested their right to arbitrate with anyone without notification to any interested party. On 22 June 2022 Mr. Doran was written to by the PRAI. Mr. Doran was informed that he had been involved in the process throughout – being the process initiated by Mr. Allison. – and there was reference to the various correspondence that had passed between the parties. The last correspondence from Mr. Doran had been the letter dated 5 February 2019 where he was clear that he was not pursuing an appeal. The PRAI stated that they were duly informed by the lodging party that the property had been sold and that the

practice was that if the new owner wished, they could take over a pending application once all relevant proofs of their entitlement was lodged. Those proofs had been lodged and the PRAI was able to continue to process under the same application. The relevant monies were lodged in their office on 24 March 2022, and the vesting certificate issued on 4 April 2022. Thereafter there was further correspondence and emails between the parties including an email on 26 July 2022 in which Mr. Doran asserted his belief that the PRAI had acted *ultra vires* in the particular case in question and that he wished to determine the basis upon which it had made its decision.

32. On 8 August 2022 the PRAI replied to Mr. Doran and stated that it had replied to all correspondence and considered it had dealt with and answered all questions raised by Mr. Doran. The email noted that the PRAI adhered strictly to the guidelines under the legislation under which applications are lodged and, *inter alia*, that awards were based on the application of the relevant statutory formulae, which were explained.

33. Mr. Doran continued to request information and sent letters dated 14 September 2022 to the Examiner of Titles in the PRAI and 25 September 2022 to the Chief Executive Officer of the PRAI. In their response, on 27 September 2022, the Examiner of Titles reiterated the process that had been applied and set out the history of the correspondence and dealings between the parties.

34. Finally, on 5 October 2022, Mr. Doran wrote to the chairperson of the PRAI making a series of complaints about the manner in which the case was dealt with. On 16 November 2022 the secretary to the PRAI responded to Mr. Doran indicating that the chairperson had nothing further to add to previous correspondence in the matter.

35. On 24 November 2023, the Chief State Solicitor's Office wrote to Mr. Doran in connection with the application to seek leave to institute judicial review proceedings, which at that stage was listed before the court on 1 February 2024. The letter informed Mr. Doran that they will be opposing the application to seek leave to bring judicial review proceedings and that that opposition are on the grounds of delay and that the proceedings constituted an abuse of process where he had already availed of the statutory appeal mechanism under section 21(5) of the Act of 1978.

36. Significantly, the letter draws the applicant's attention to the requirement in judicial review proceedings to act promptly and that applications for leave to apply for judicial review must be made within a period of three months from the date on which the grounds for the application first arose. The letter included the following observation: -

> *"An Applicant is entitled to apply for an extension of time for bringing judicial review proceedings pursuant to O. 84, r. 21(3) of the Rules of the Superior Courts if they can identify special circumstances for so doing. Normally this is done as part of the application for leave to seek judicial review. Whereas we are opposed to the Court granting you leave to seek judicial review, our client will not object if you wish to explain on affidavit why you say that the Court should extend the time to seek judicial review, subject of course to our clients right to file a replying affidavit, if appropriate. It is a matter for you as to whether you wish to file such an affidavit,"*

THE CASE LAW ON DELAY

37. Order 84, rule 21(1) to (6) of the RSC, provides that an application for judicial review shall be made within three months from the date when grounds for the application first arose. The court may, where an application is made for that purpose, extend the period within which

an application for leave to apply for judicial review may be made. In such a case, the court may extend the period only if it is satisfied that (a) there is good and sufficient reason for doing so, and (b) the circumstances that resulted in the failure to make the application for leave within the period set out in subrule (1) either were outside the control of or could not reasonably have been anticipated by the applicant for such an extension. In considering an application for an extension the court must have regard to the effect which an extension of the period of time might have on a respondent or a third party. Importantly, O. 84 r. 21(5) provides that an application for an extension shall be grounded upon an affidavit sworn by, or on behalf of, the applicant is required to set out the reasons for the failure to make the application within the period prescribed for the making of plea of applications.

38. The manner in which those Rules operate has been the subject of extensive consideration by the courts and in particular in a decision of the Court of Appeal, *Arthropharm (Europe) Limited v. Health Products Regulatory Authority and Ors* [2022] IECA 109. As noted by Murray J. at para. 68 of his judgment, time runs for the purposes of O. 84 r. 21(1) from the point at which there is a formal consequence adverse to the interests of the applicant, this being when a decision having legal effect is made. Later in the judgment, at para. 87, Murray J. having considered the text of the rule and the decisions relating to the rule, stated that the following propositions were now clear:-

> *"(i) The period fixed by Order 84 Rule 21(1) is not a limitation period properly so called (Sfar v. Revenue Commissioners [2016] IESC 15 at para. 19 (per McKechnie J.)). The requirement to proceed within that time instead derives from a rule of court which, while having the force of law, is subject to the possibility of an extension if the court is satisfied in accordance with the relevant law that time should be extended (MO'S at para. 69 per Finlay Geoghegan J.).*

(ii) The effect of the rule is clearly to place an obligation on the party seeking an extension of time to identify on oath the reasons the application was not brought during the period fixed by Order 84 Rule 21(1) and during the time between the expiry of that point and the date on which the application was eventually brought (MO'S at para. 60). It is the obligation of the court when presented with such reasons to assess them 'carefully and critically' (SC SYM Fotovoltaic Energy SRL v. Mayo County Council (at para. 72(7)). It should undertake this exercise conscious of the purpose underlying the rule in its present form: the present version of Order 84 Rule 21 'is framed in terms which indicate a clear intent to reduce delay and to further limit time periods which previously existed for applications for judicial review' (Heaphy v Governor of Cork Prison) at para. 99 per Whelan J.).

(iii) Before it can extend time, the court must be satisfied that the reasons so given explain and objectively justify the delay in bringing the application on or sufficient to justify the court in exercising its discretion in favour of the applicant… . In this regard the addition of the word "sufficient" to the "good reason" previously required by the rule will not in most cases add to the pre-existing test (MO'S at para. 60), although it may be relevant in situations where the explanation given is in theory a good one, but the evidence adduced in support of it is insufficient to sustain it (AB v. XY at para. 44).

(iv) In conducting that exercise the court must take account of all relevant circumstances, including the decision that is sought to be challenged, the nature of the claim that it is invalid and "any relevant facts and circumstances pertaining to the

parties"(MO'S at para. 60). In applying the factors so found, the essential function of the court is to engage in a 'balancing exercise' (AB v. XY at para. 46).

(v) In this regard, factors of which account may be taken will include the nature of the order or actions the subject of the application, the conduct of the applicant, the conduct of the respondent, the effect of the decision it is sought to challenge, any steps taken by the parties subsequent to that decision, and the public policy that proceedings relating to the domain of public law take place promptly except where good reason is furnished… . The "blameworthiness" of the applicant is relevant, albeit as only one such factor to be weighed in the balance (Kelly v. Leitrim County Council [2005] IEHC 11, [2005] 2 IR 404 at para. 19(d)).

(vi) It follows that the court may be required to balance the rights of an applicant with those of a respondent or a notice party, taking into account also the prejudice to either consequent upon the failure of the applicant to proceed to make its application within the time fixed by the rules. This, in particular, requires the court to take account of the effect of the extension of time upon a third party affected by the decision in question (see AB v. XY at para. 47).

(vii) It is 'probable that in most instances where a court has been satisfied of good and sufficient reason to extend time it will also be in a position to make a positive finding under sub-rule (3)(b) in relation to the circumstances which resulted in the failure to apply within the three month period (MO'S at para. 100).

(viii) That said, the rule clearly positions an inquiry as to whether the applicant had within its 'control' the effluxion of time; it is clear from the rule that in addition to being satisfied that good and sufficient reasons exist for an extension of time, the court must be satisfied as a matter of fact that the circumstances which resulted in the delay were outside the control of the applicant,… . Where a delay arises from circumstances which were within the control of the applicant, the court may not extend...

(ix) The court is also free to take account the interests underlying the proposed proceedings. Commercial cases – in which the requirements of certainty may be particularly pressing and in which it is reasonable to assume that the parties are well resourced and in a position to readily obtain access to legal advice – may justify a stricter approach then in other types of challenge (MO'S at para. 62; Hogan and Morgan 'Administrative Law' (5th ed. 2019 at para. 18-179).

39. At para. 141 Murray J. addresses the important point that engaging in correspondence following the making of a decision will not give rise to a new decision for the purposes of an extension of time:-

"*141. At the same time, and second, an applicant for judicial review cannot obtain an extension of time by corresponding with the original decision maker, asking them to reconsider their decision and then asserting that there is a new 'decision' to review when they respond (or as the case may be, fail to do so): '[a] decision which is a reiteration of a previous decision is not a new decision. Time therefore begins to run when the final decision is first made' (Finnerty v. Western Health Board [1998] IEHC 143 per Carroll J., approved in Sfar v. Revenue Commissioners at para. 41).*

142. The third principle is related to the second but focusses not primarily on the substance of the underlying decision but looks instead at the grounds of challenge that are sought to be made to it. It would make a nonsense of the time limit imposed by Order 84 Rule 21 if an applicant could under the guise of a challenge to a decision made within time, obtain the invalidation of an earlier decision for which time had run and expired. The rule against collateral attack prevents this. It was most recently explained in Independent Newspapers plc v. IA [2020] IECA 19 as follows (at para. 56):

> *'A 'collateral attack' in this sense arises in multi-stage decision making processes within which later decisions inevitably depend on and assume the legality of an earlier determination. In that situation, a challenge to the later decision may directly or indirectly present an issue as to the legality of the earlier one. Such an indirect attack is not permissible where the earlier decision could and should have been challenged within a fixed period which has passed. The rationale underlying the relevant case law is that a party who has the benefit of an administrative decision which is not challenged within a legally mandated time frame should not be exposed to the risk of having the validity of that decision subsequently challenged in later proceedings which seek to quash the validity of a subsequent decision (Sweetman v. An Bord Pleanala [2018] 2 IR 250, at p. 264).'*
>
> *...*

144. Obviously, the application of the three principles to which I have just referred to a particular decision depends in any given case on the relevant facts and issues viewed in the light of the proper construction of the relevant regulatory regime. In any given case, accordingly, the court must ask whether in substance the decision which it is

sought to challenge, and the responses issued by the decision maker in reply to subsequent objections to the impugned determination, are the same 'decision' or a new decision and, if the latter, whether the grounds of challenge are in substance a challenge to a decision the entitlement to review which has expired by effluxion of time."

DISCUSSION AND CONCLUSIONS

40. In the premises, I am satisfied from a consideration of section 21 and section 22 of the Act of 1978 that once an arbitration award has been made and any appeal process has concluded, the PRAI, now Tailte Éireann, has a mandatory obligation to issue a vesting certificate. As such, the issuing of a vesting certificate, subject to ensuring that the various matters provided for (such as the submissions of documents and payments have been made) is not a matter within the discretion of the respondent. Furthermore, the legislation and rules make it clear that if there is a transmission or change of interest before the vesting (which is what occurred here) the proceedings may be continued by and in the name of the applicant's successor in title.

41. In those premises, I agree with the respondent's argument in this case that Mr. Doran's challenge to the vesting certificate is properly characterised as a form of collateral challenge to the underlying arbitration award in favour of Mr. Allison. Within that characterisation, it would follow that, in fact, the time within which a judicial review could be brought ran from 21 December 2017.

42. It is not possible for me to characterise the various efforts on the part of the PRAI to engage with Mr. Doran as obstructive or intended to hinder his efforts to understand the basis

for the arbitration award. The PRAI replied to Mr. Doran's very extensive queries in a comprehensive, polite and timely manner. What is clear from the correspondence and other documentary evidence is that an award was made in December 2017. At that point Mr. Doran exercised his right under the legislation to bring an appeal to the Circuit Court. The first step in that process was to seek an extension of time to appeal – given that the award was made on the 17 December 2017. There was a marked lack of clarity around what occurred in the Circuit Court, although it is clear that Mr. Doran ultimately was not successful in bringing his appeal. On the basis of his own correspondence, which I am taking as being true and accurate, it is also reasonably clear that Mr. Doran had sought legal advice in 2019 and was informed of his options including the option of taking judicial review proceedings. However, Mr. Doran appears to have made an informed decision at some stage in 2019 that he did not wish to take that step at that point. The court was not made aware of – and did not seek – the content of any advice obtained regarding the option of taking a judicial review, but it would be very surprising if that advice did not include a warning about the relevant applicable time limits.

43. On the basis of the judgment in *Arthropharm* and the other established jurisprudence in this field, I am satisfied that if Mr. Doran was unhappy with the arbitration award or the process that led to the award, he ought to have commenced these proceedings within three months from 17 December 2017. I am similarly satisfied, in light of the legislative structures referred to above, that the PRAI was obliged to grant the vesting certificate when it was informed that the Circuit Court process had concluded. The challenge to the vesting certificate was inexorably connected to the concerns that Mr. Doran expressed about the process that led to the earlier arbitration award. In those premises, I am satisfied that Mr Doran was incorrect to assert that the challenge to the vesting certificate could be separated from the challenge to the arbitration

award, and that the challenge to the vesting certificate properly should be treated as a collateral challenge to the arbitration award.

44. If that is not a correct approach to the underlying factual matrix, and assuming for the sake of argument that there was a separate and self-contained basis for challenging the making of the vesting certificate, it seems to me that this challenge also is very much out of time. The vesting certificate was granted on 4 April 2022. Mr. Doran asserted that the court should treat time as running from the time when his correspondence with the PRAI was concluded in November 2022. This cannot be accepted by the court. As explained by Murray J. in the *Arthropharm* judgment, the time for commencing judicial review proceedings cannot be postponed by a potential applicant engaging in correspondence seeking to have a public body revisit a decision that has been made. This is particularly apposite where, as here, the legislative provisions regarding the making of a vesting certificate do not appear to me to make any provision for the PRAI re-visiting or revoking a vesting certificate. Moreover, the consistent response from the PRAI to Mr. Doran's correspondence following the making of the vesting certificate was that they were standing over the process and certificate.

45. In those premises I must find that any application for leave to apply for judicial review concerning the vesting certificate should have been commenced within three months of 4 April 2022.

46. It has to be observed that Mr. Doran did not actually apply for an extension of time. The respondent through its solicitors very fairly drew Mr. Doran's attention to his potential difficulty in November 2023 and afforded him an opportunity to file an affidavit. Mr. Doran did not take up this offer. Again, it is well established at this point that if a party requires – or

may require – an extension of time, the proper and necessary response is to set out on affidavit the basis for that extension. That has not occurred in this case. Finally, I would have real concerns about the prospect of granting an extension of time in circumstances where the judicial review proceedings could have a potential impact on the title of Ms. O'Dwyer, deriving as it does from the making of the vesting certificate.

47. In the circumstances, I am not required to address whether or not Mr. Doran has met the arguable grounds threshold, as I am satisfied that this application was commenced well outside the required period and that Mr. Doran has not sought an extension or proffered an adequate explanation why an extension should be granted. Accordingly, I am refusing the application.

48. As this judgment will be delivered electronically, I will express the provisional view that the respondent prima facie would be entitled to an order for costs as against Mr. Doran. I will adjourn the matter for mention before me on Wednesday 15 May 2024 at 10.30 am for any submissions on costs or on the final orders to be made.

APPENDIX - RELIEFS SOUGHT BY THE APPLICANT

The applicant sought the following reliefs:-

1. *A finding by the Court in favour of the Appellant.*

2. *A Declaration by the Court that the award made to the Applicant No. 1, Mr. Albert Allison was invalid and not in accordance with the law as he, at the time of the award, had not interest in the property to enlarge into a fee simple.*

3. *A Declaration by the Court that the award made to Applicant No. 2, Ms. Joyce O'Dwyer was not in accordance with the law as it was backdated and purported to use Application No. 1, applied for by Mr. Allison in his own name, as the basis for the granting and issuance of a vesting certificate in favour of Ms. O'Dwyer in her name almost five years after the grant of the first award.*

4. *A Declaration by the Court that the Registrar acting as Arbitrator in issuing a vesting certificate was not acting in accordance with law and was negligent and at fault, both legally and procedurally, in how he dealt with Application No. 2.*

5. *A Declaration by the Court that the processing of the applications was not in accord with natural justice and failed to satisfy the constitutional requirements of being open, fair and reasonable and that it amounted to maladministration and consequently, that the Board should consider whether their professional staff members are suitable for their roles and what might be changed procedurally to avoid a repetition of the approach and decisions made in this instance.*

6. *An Order of Prohibition to restrain the PRA in the exercise of its judicial function from using any mechanisms, in respect of future applications to purchase a fee simple by an applicant, which are based on merging, joining with, expanding, acquiring or subsuming. A second or separate further application using a 'piggybacking' concept or any similar contrivance or mechanism not clearly identified in the Act and to treat each individual application going forward as being self-contained, separate and distinct.*

7. *A Declaration by the Court that: the PRA, its officers and professional staff were negligent in their approach to the issues, they were at fault in diagnosing how they should be best undertaken, they failed in many respects not least in law, in implementing the solution which they had erroneously chosen and, in addition, that the handling and processing throughout was negligent and not in accord with legislation or fair procedure in very many respects; that there is some evidence that the Appellant was misled or deceived and the totality of misjudgments, misstatements, miscalculations, omissions, errors and obfuscation is significant and amounts to malfeasance and the deficiencies are so many is number, of such potential impact in that they deal with the title to land and so prolonged over five years and through endless argument and appeal, that it is right in the circumstances that the matter be referred to the DPP for his consideration under Section 6(1) of Criminal Justice (Theft and Fraud Offences) Act 2001. Or in the alternative,*

   An award of damages in the amount of €600,000 in total, 75% of such sum to be used as set out below and 25% of the sum by way of an award of compensatory and other relevant damages to compensate the Appellant/plaintiff for breach of statutory duty,

malfeasance in public office, issuing of a vesting certificate wrongly and in contravention to the law and the consequent loss of the Appellant's fee simple interest in the property and for any other loss or damage he has suffered including compensation for mental and emotional distress he has suffered, this being to some extent evident from his evidence: The award is intended to put him in the same position as if the five year process had not happened and had he not lost his title to The Property (and possibly other titles also by way of other awards over the years).

The 75% tranche of damages to be segregated separately and identified in the PRA's books of account as damages and that pursuant to the Appellant's suggestion that a major Dublin law firm be appointed to investigate and report on the deficits and criticisms made by him and more generally to identify any other problems of deficiencies both within the Ground Rents section and elsewhere within the PRA, particularly in regard to making decisions in regard to title and registration and that subsequently consultants and/or other outside advisers be hired to assist in implementing whatever changes that might have been identified in the investigative phase and to ensure that they are implemented, the fees for all such inputs and assistance to be paid for from the separate fund to be created for this purpose from the damages awarded, comprising 75% of such damages; that part of the damages award to be deemed exemplary and punitive in nature, but also be restitutionary in intent, being motivated to set things right.

8. *An Order of costs in favour of the Appellant.*

9. *Such other Orders that the Judge might care to make.*