

Dispute Resolution

Uncertainty over jurisdiction to grant Orders for Possession.

Uncertainty surrounding the Circuit Court's jurisdiction to grant Orders for Possession.

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Two recent High Court decisions have caused uncertainty regarding the jurisdiction of the Circuit Court to determine ejection and repossessions proceedings in respect of residential properties that do not have a rateable valuation.

In *Bank of Ireland Mortgage Bank v Finnegan & Ward* [2015] IEHC 30, the High Court held that the Circuit Court does not have jurisdiction to hear repossession cases with regard to residential properties that do not have a rateable valuation.

In *Bank of Ireland Mortgage Bank v Hanley & Giblin* [2015] IEHC 738, the High Court disagreed with the decision in *Finnegan & Ward* and held that the Circuit Court does have jurisdiction to hear such cases.

We look at both of these cases and the implications for the plaintiff and the defendant.

Bank of Ireland Mortgage Bank v Finnegan & Ward [2015] IEHC 30

At the initial hearing before the Circuit Court, the Bank was granted an order for possession over the defendants' family home. The Bank had relied on a letter of provisional assessment of valuation - the property did not have a rateable valuation as it had been constructed subsequent to the commencement of the Valuation Act 2001.

The defendants appealed the Circuit Court order to the High Court. The appeal focussed on the jurisdiction of the Circuit Court to make the order for possession in circumstances where the Bank had relied on a letter of provisional assessment of valuation of the property, rather than a certificate of rateable valuation. The defendants argued that the Circuit Court's jurisdiction depended on the property having a rateable valuation lower than €253.94.

On appeal, the High Court found that, as the defendants' home did not have a rateable valuation, the Circuit Court did not have the jurisdiction to hear the Bank's claim for possession. The High Court allowed the appeal and set aside the Circuit Court order for possession.

Bank of Ireland Mortgage Bank v Hanley & Giblin [2015] IEHC 738

The difference between this case and the *Finnegan & Ward* case is that at the appeal hearing, the Bank sought to rely on a certificate from the Valuation Office which stated that, had the property been separately rated, the rateable valuation would have been below the threshold of €253.94.

On deciding the issue Mr. Justice Noonan found that if a property does not have a rateable valuation it cannot exceed the threshold of €253.94 and, as a result, the Circuit Court does have jurisdiction to hear the case.

Mr. Justice Noonan held the legislation "*does not require that the property in issue has a rateable valuation in order to confer jurisdiction on the Circuit Court. However, absent such proof being adduced by the plaintiff he takes the risk that the Circuit Court, or the High Court on appeal, may be deprived of jurisdiction if the defendant establishes that there is a rateable valuation and it exceeds the statutory limit*".

On making his decision, Mr Justice Noonan acknowledged that he had “*arrived at a different conclusion to that of Ms Justice Murphy in Finnegan & Ward*” and that he did so with “*considerable hesitation and reluctance*”.

Legislation

The Courts (Supplemental Provisions) Act 1961, as amended, provides that the Circuit Court has jurisdiction to determine repossession proceedings subject to certain jurisdictional thresholds, one of which relates to the rateable valuation of the property in question. In circumstances where the rateable valuation of the property is lower than €253.94 the Circuit Court has jurisdiction to deal with the matter. Where the rateable valuation exceeds €253.94 possession proceedings must be brought in the High Court.

The Valuation Act 2001, deals with the rateable valuation of all property which is rateable under the Act. It provides that domestic premises, save for certain limited circumstances, are not rateable. As a result, any domestic premises built since the Valuation Act 2001 came into effect in 2002 are not rateable.

The Land & Conveyancing Law Reform Act 2009, provides that the Circuit Court has exclusive jurisdiction to deal with repossession proceedings where the property is subject to a housing loan.

The Land and Conveyancing Act 2013, provides that possession proceedings must be brought within the Circuit Court where the property is the principal private residence of the borrower and the mortgage concerned was created prior to 1 December 2009.

Implications

The uncertainty caused by the conflicting decisions of the High Court as to the jurisdiction of the Circuit Court is further compounded by the fact that both cases were appeals of a Circuit Court decision to the High Court and there is no method for a further appeal to the Court of Appeal or the Supreme Court.

However, Mr Justice Noonan has recently expressed his hope that the continuing confusion concerning the Circuit Court’s jurisdiction to make such repossession orders will be resolved “*as soon as possible*”.

Mr Justice White of the High Court is due to deliver a decision on 19 February 2016 in a similar case, *Ulster Bank Ltd v Tighe*, having reserved his judgment to consider the conflicting decisions in the *Finnegan & Ward* and *Hanley & Giblin* cases, which should bring some much needed clarity to the issue.

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