

Property & Construction

# Licensees – On the Run!

## Esso Ireland Limited and Ireland ROC Limited v Nine One One Retail Limited

In determining whether an agreement is a licence or a tenancy, the Court will look at the true nature of the agreement rather than the label given to it by the parties. This clear ruling was delivered by Mr Justice Brian J. McGovern on 14th November 2013.

This case underlines the importance of ensuring that not only are the terms of the Licence agreement clear, using language and clauses that are consistent with a licence rather than a tenancy but that over the period of the Licence the conduct of the relationship of the parties reflects the terms of the agreed Licence.

The Licensee (Nine One One), providers of food services, had occupied a number of Esso owned garage premises pursuant to the terms of Operating Agreements and Licences with Esso's operator, Ireland ROC Limited ("IROC"). Nine One One claimed that it was in possession of a tenement and was entitled to a new tenancy under the Landlord and Tenant legislation.

The Judge looked at the facts of the case to determine whether a tenancy existed and concluded that "there were no facts surrounding the Licensee's occupation of the premises which would entitle the Court to say that this is a tenancy agreement in circumstances where they have both agreed that no landlord and tenant relationship shall arise". The facts of the case were consistent with the nature of the relationship as stated by the parties in the written agreement.

The Licence Agreement permitted the licensee, for an operating fee, in connection with the provision of a food service for a specified period, to:-

- (a) use a specified licensed area in the garage premises ("the Food Service Facility") including a food counter and food preparation area and, in larger premises, associated seating;
- (b) access the Food Service Facility on a 24 hours basis in default of which ESSO/IROC would provide alternative arrangements for deliveries;
- (c) use specified equipment and furniture provided and maintained by ESSO/IROC including ovens, the food counter and refrigeration units

Neither the Operating Agreement nor the Licence provided for exclusive possession by the Licensee of the Food Service Facility and the Licensee did not in fact have exclusive possession of it or any part of it. Relevant facts included:

- The Licensee could only access the Food Service Facility through the main store entrance in each garage;
- Outside the main customer opening hours the Licensee required permission to access the Food Service Facility;
- Night time deliveries required access arrangements to be made with ESSO/IROC and the Food Service Facility was part of an open plan shop floor being operated as a filling station and garage.

The Licence Agreement stated that no relationship of landlord and tenant existed or was intended to be created between the parties. The Judge accepted that while this does not of itself establish that there was no landlord and tenant relationship, the evidence did not establish that the characteristics of

a tenancy existed in this case. According to Justice Brian J. McGovern “the Court should be slow to look behind the clear terms negotiated by the parties at arm’s length and in circumstances where each was legally represented”.

This judgment will act as a deterrent for future licensees, such as food operators in service stations, claiming Landlord and Tenant renewal rights unless they can differentiate themselves from cases such as this.

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