

(4,211 words)

THE SUPREME COURT
Record No. S:AP:IE: 2016: 000119

Between/

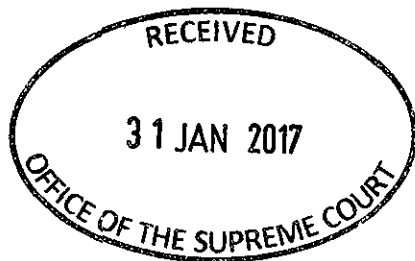
PERMANENT TSB plc

Appellant

And

DAVID LANGAN

Respondent



ATTORNEY GENERAL

Intervening party

SUBMISSIONS ON BEHALF OF THE ATTORNEY GENERAL

INTRODUCTION

1. This appeal brought by Permanent TSB plc ("The Bank") is against the Court of Appeal judgement as given by Mr. Justice Hogan on 28th July 2016.
2. On the 17th of January 2017 leave was granted by the Supreme Court to the Attorney General to intervene in the proceedings.
3. The judgement arose on foot of a case stated made by Ms. Justice Baker of the High Court following on from conflicting judgements of Ms. Justice Murphy in *Bank of Ireland Mortgage Bank v Finnegan and Ward*¹ and that of Mr. Justice Noonan in *Bank of Ireland Mortgage Bank v Hanley and Giblin*² over whether the Circuit Court retained jurisdiction in mortgagee possession cases in respect of domestic premises

¹ [2015] IEHC 304

² [2015] IEHC 738

following the abolition of rateable valuation on domestic premises by the Valuation Act 2001 (“The 2001 Act”).

4. The proceedings concerned five properties in North Dublin and one in Smithfield. The Bank issued possession proceedings by way of two Civil Bills in respect of these properties. Each contained the usual plea ‘the annual rateable valuation of each of the said properties does not exceed €253.95’.
5. No point was taken in the Circuit Court regarding the Circuit Courts’ jurisdiction under the Courts (Supplemental Provisions) Act 1961.
6. The orders for possession made by the Circuit Court were appealed to the High Court. The issue of RV and the Circuit Court’s jurisdiction was raised in the High Court.
7. A certificate of valuation under s. 67 for the properties was not issued by the Valuation Office, but an officer did provide letters to the Plaintiff stating that ‘I am unable to issue such certificate as the property is not as yet valued for rating purposes, however....I certify that the rateable valuation of the said buildings will not exceed [€253.95]’.
8. Baker J. issued a consultative case stated to the Court of Appeal under s. 38(3) of the Courts of Justice Act 1936 as amended. The first question stated was:-

“If a property is not rateable by virtue of the Valuation Act 2001, or otherwise, is the Circuit Court’s jurisdiction under s. 22(1) of the Courts (Supplemental Provisions) Act 1961 excluded?”

9. The Court of Appeal answered that question, “Yes”.

SUMMARY OF THE POSITION OF THE ATTORNEY GENERAL

10. It is submitted that the proceedings and the judgment of the Court of Appeal, and in particular the answer given by that Court to the first question in the Case Stated, require, in the first instance, consideration of S.67 of the Valuation Act 2001 which, it is submitted, may be sufficient to enable this Court to deal with all of the questions in the Case Stated. The submissions of the Attorney General deal first with S.67 of the 2001 Act and then, in the alternative, in case this Court considers it necessary to give judgment on the constitutional points raised in the submissions before this Court, set out a view on those points.

(A) SECTION 67

11. The primary submission of the Attorney is that the decision of the Court of Appeal decision was erroneous, or at least too widely expressed, because it did not take account of either the existence of s. 67 or its clear effects. Pursuant to s. 67, schedule 4 properties can have their rateable value assessed.
12. The first question stated was: "If a property is not rateable by virtue of the Valuation Act 2001, or otherwise, is the Circuit Court's jurisdiction under s. 22(1) of the Courts (Supplemental Provisions) Act 1961 excluded?" The Court of Appeal answered that question, "Yes".
13. The reasoning grounding this answer is found at paragraphs 36-37, and at paragraph 46 of the judgement:

"It seems to me that it is necessarily implicit in the scheme of the jurisdictional limits prescribed by the s. 22(1) and the Third Schedule of the 1961 Act that the property in question must have a rateable valuation. If, whether by virtue of the 2001 Act or otherwise, the property is not rateable, the Circuit Court simply has not jurisdiction to hear the

proceedings, since the entire premise of the Third Schedule of the 1961 Act is that the Circuit Court has jurisdiction where:-

- (i) the property in question is rateable and,*
- (ii) that rateable valuation is less than €252*

37. One might equally say that the Circuit Court has been given no jurisdiction in respect of unrateable property. If the Oireachtas had ever intended that the Circuit Court should enjoy a jurisdiction in respect of unrateable property, then the limits of that jurisdiction would have been specified by law in the manner envisaged by Article 34.3.4.... ”

14. At paragraph 46 under the heading conclusion, the Court held:-

“I would sum up the jurisdictional dispute in the present case by saying that, in the case of possession proceedings concerning property, the entire premise of the jurisdiction of the Circuit Court as vested by s. 22(1) of the 1961 Act and the Third Schedule (as amended) is that the property in question must be rateable. Although the effect, however, of the 2001 Act was to make dwellings no longer rateable, this also had the consequence that the Circuit Court had no jurisdiction to hear disputes in relation to such property”.

15. And at 48:-

“...it is sufficient to say that the Circuit Court had no jurisdiction to hear the present proceedings because the properties in question are domestic dwellings which are not rateable”.

16. Section 67 expressly provides that Schedule 4 properties, such as dwellings, may be valued for the purposes of any provision of statutes passed before the commencement of the 2001 Act relating to the rateable value of a property. It is quoted here in full:-

67.—(1) In this section “property concerned” means property referred to in subsection (9).

(2) Notwithstanding the preceding sections of this Act, the Commissioner may, in relation to property concerned that falls within Schedule 4 and for the purpose of the provision referred to in subsection (9), on application being made to him or her in that behalf by a person who appears to the Commissioner to have a sufficient interest in the matter, cause the value of the property to be determined as if the property were relevant property rateable under this Act.

(3) The value of the property so determined shall be deemed to be the rateable valuation of the property within the meaning, and for the purpose, of the provision referred to in subsection (9).

(4) The Commissioner shall issue to the person referred to in subsection (2) a certificate stating the value of the property referred to in that subsection as determined thereunder.

(5) The Commissioner shall, before deciding whether to accede to an application under subsection (1) in relation to property that appears on an existing valuation list which is for the time being in force, require the applicant to show cause why the valuation of the property appearing on that list will not suffice for the purpose of the provision referred to in subsection (9).

(6) If an officer of the Commissioner, the Commissioner or the Tribunal, in dealing with an application or appeal referred to in subsection (9) of section 57, considers, having received a submission to that effect under and in accordance with that subsection, that—

(a) the property, the subject of the application or appeal, is property concerned, and

(b) the application or appeal ought to be dealt with under that subsection so as to secure a determination of the value of the property for the purpose of the provision referred to in subsection (9),

he or she or it shall deal with the application or appeal under subsection (9) of section 57 accordingly.

(7) The value of the property that is determined or confirmed by virtue of the property being so dealt with shall be deemed to be the rateable valuation of the property within the meaning, and for the purpose, of the provision referred to in subsection (9).

(8) The officer of the Commissioner concerned or, in the case of an appeal referred to in subsection (6), the Commissioner shall issue to the person who made the application or appeal referred to in that subsection a certificate stating the value of the property as determined or confirmed by virtue of its being dealt with in the manner referred to in that subsection.

(9) The provision mentioned in the preceding subsections of this section is any provision of a statute passed before the commencement of this Act, or of an instrument made under such a statute, which imposes as a condition or as one of the conditions for the enjoyment of, or the entitlement to, any right under the statute or instrument a condition expressed to relate to the rateable valuation of a property.

(10) In subsection (9) "statute" has the same meaning as it has in the Interpretation Act, 1937.

17. The meaning and relationship between subsection (2) and (9) is plain. In express terms, subsection (2) applies to Schedule 4 property and it empowers the Commissioner to cause the value of the property to be determined as if the property were relevant property rateable under the 2001 Act. The purpose of such valuations is for other enactments passed before the commencement of this Act which impose for the enjoyment of any right under such enactments a condition expressed to relate to the rateable valuation of a property.
18. Section 67 ensures that enactments which impose a condition expressed to relate to the rateable valuation of a property for the enjoyment of or the entitlement to any right remain effective. This is achieved by allowing such properties be valued for the purpose of such other provisions. Hence, properties which are “not rateable” can have a value under the 2001 Act.
19. The rateable value thresholds in Courts (Supplemental Provisions) Act 1961, Schedule 3 are examples of enactments and statutory conditions contemplated by s. 67.
20. It appears that s. 67 was not considered by the Court of Appeal. It is not referred to all in the judgement.
21. It is also submitted that the Court erred in paragraph 36 wherein it is stated that the Courts (Supplemental Provisions) Act 1961 requires two conditions:

- “(i) the property in question is rateable and,
- (ii) that rateable valuation is less than €252”

22. The 1961 Act does not have the requirement underlined. There is no justification or basis for the Court to read that condition into the section. As submitted above, rateability and value are two distinct concepts under the 2001 Act.

23. The statutory condition is that the property must have a rateable valuation less than €253.95; and Schedule 4 exempt properties can obtain a valuation under s. 67 for the purpose of satisfying that threshold.
24. The correct position is that where a s. 67 certificate has issued in respect of a property which is below €253.95, the Circuit Court has jurisdiction under the 1961 Act, though the Court of Appeal decision suggests otherwise.
25. The decision of the Court of Appeal is that the Circuit Court has no jurisdiction in the case of dwellings at all - because they are not rateable property under the 2001 Act.
26. Based on that determination, by implication it would mean the other categories of exempt properties are also excluded from the Circuit Court's jurisdiction, since there is no logical or legal basis to distinguish between them.
27. Therefore the true effect of Section 67 of the 2001 Act is really only to continue in existence the system of conferring jurisdiction by reference to rateable valuation set out in the 1961 Act. Section 67(3) is a deeming provision which is intended to ensure that, notwithstanding the fact that certain premises cease to have a rateable valuation by virtue of the 2001 Act, various statutory provisions which depend on rateable valuation would continue to be operated as if the premises in question had never ceased to have a rateable valuation.
28. Neither party to the appeal has sought to argue that the conferring of jurisdiction on the Circuit Court in this type of case by the Courts (Supplemental Provisions) Act 1961 is unconstitutional.
29. Therefore, subject to the decision of this Court, it is submitted by the Attorney General that it is not necessary, for the purpose of dealing with the questions in the

Case Stated, to deal with the constitutional questions about the meaning of the words "local and limited jurisdiction" in Article 34.3.4 of the Constitution.

30. However, in case this Court decides that, in this case, it is necessary to give judgment on the meaning of the words "local and limited jurisdiction" in Article 34.3.4 of the Constitution, the Attorney General would offer the following view.

31. The Attorney General concurs with the argument by PTSB at para 43 to 65 of its submissions that the treatment of the Grimes case by the Court of Appeal was mistaken. The Attorney adopts these submissions, and agrees that the submissions reflect the meaning and intent of Article 34.3.4. It is not the case that, under the Constitution, the jurisdiction of the Circuit Court must be limited not only by subject matter, but also by some additional limitation within that subject matter. Were it otherwise, as pointed out by PTSB, the conferral of jurisdiction on the Circuit Court over the entire subject of mortgages relating to principal primary residences may offend the Constitution. The same would apply to any conferral by the Oireachtas of jurisdiction on the Circuit Court by reference to subject matter.

32. While the Attorney General wishes, if it is necessary to do so, to concur with that argument about Grimes, the Attorney General, subject to the directions of this Court, does not consider that it is necessary for her to submit argument on the question of whether the Circuit Court has unlimited jurisdiction under the 1961 Act in respect of property which has no rateable valuation.

33. That is a matter which, subject to the directions of this Court, the Attorney General considers is a matter for the parties.

34. In support of the submissions above about S.67 of the 2001 Act, the following submissions are made.

**(B) VALUATION ACT 2001 AND THE EXPRESSIONS "NOT RATEABLE",
"UNRATEABLE" AND "VALUE"**

35. At the outset it is important to identify firstly, the expressions which are used by the Valuation Act 2001 as these contrast to a degree with those used by the Court of Appeal, and secondly the scheme enacted by the Oireachtas in the 2001 Act as amended.
36. It is respectfully submitted that one aspect of the error into which the Court of Appeal fell arose because of failure to identify the meaning of the expressions "not rateable", "unrateable" and "value".
37. The expressions "value" and "valuation" on the one hand, and relevant property "not rateable" on the other, are expressions that appear in the Valuation Act 2001.
38. There is no statutory expression "unrateable" in the Valuation Act, though this expression is used in the judgement of the Court of Appeal (see paragraph 7, 37, answer to Q. 3 paragraph 53).
39. As explained in more detail in this part of the submissions, the references in the 2001 Act to 'not rateable' does not refer to "value" or to the 'valuing of the property'. The expression 'not rateable' refers to the striking of a rate. If a property is not rateable it denotes that no rate should be struck in respect of the property, and by its own no more.
40. The significance is that the words in issue in Schedule 3 of the Courts (Supplemental Provisions) Act 1961 ("the 1961 Act") concern value - not the rateable status of a property.
41. The danger of substituting wording for the wording chosen by the legislature has not infrequently been noted by appeal courts. If authority is needed on this point, regard can be had to what Lord Evershed said in *Bewlay (Tobacconists) Ltd v. British Bata*

shoe co. Ltd [1959] 1 W.L.R. 45 at 49: *"I prefer to avoid exegeses of the statutory language unless they are absolutely necessary; for the result would otherwise tend thereafter to substitute for the problem of construction of Parliamentary language the problem of the construction of the judgments of the court."* In *O'Reilly v. Leahy* [1931] I.R. 494 Hanna J. stated:-

"We cannot substitute any other words for the words in the Act, and we must not, in my opinion, substitute for the words "without good and sufficient cause" the word "capricious," or other words limiting the interpretation or ordinary meaning to be placed upon the words in the Act. The Court should determine what meaning and interpretation is to be given to each word."

42. Set out below is a short summary of the scheme under the 2001 Act and the relationship between the 'value' of a property and a 'rate' and 'rateability':-

- (a) The Commissioner of Valuation ("the Commissioner") has core functions under the Valuation Act in respect of the valuing of relevant property in accordance with the provisions of the Valuation Act, 2001 ("the 2001 Act"). His primary functions concern the valuing of properties and the maintenance of valuation lists which record a property's value estimated in accordance with the 2001 Act.
- (b) Local Authorities levy and collect rates based on property valuations which appear in the valuation lists. The Commissioner has no role in the calculating, levying or collection of commercial rates.
- (c) The rate is calculated by the local authority multiplying the Net Annual Value by the 'Annual Rate on Valuation' also referred to as 'the multiplier'. The Annual Rate on Valuation is decided by each rating authority at its annual budget meeting. For example, in Dublin City the Annual Rate on Valuation for 2016 is 0.256. Thus a commercial rates calculation where the NAV is €5,000 is multiplied by 0.256 to give rise to charge of €1,285 for commercial rates. Each

rating authority area has a different 'multiplier' and valuation levels can vary from one local authority to another, and year to year. The overall rates burden for each rating authority area is shared between the occupiers in that defined area. The overall budget for the year intended to be financed by rates and the total NAV value of properties are taken into account when determining the multiplier for each rating authority area.

- (d) The 2001 Act kept in force the existing valuation lists under s. 43 of the Act.
- (e) The Act provides for both the revision of entries on an existing valuation list under s. 28 ("revision") and for the creation of new valuation lists ("revaluation") under Part V.
- (f) The statement of the value of property as appearing on a valuation list is deemed, by reasons of s. 63, to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.

43. It follows that, under the Valuation Act, the question of whether a property is 'rateable' and the question of its 'value' are two distinct legal matters.

44. The relationship between the 'value' of relevant property and 'the rate that is made' is evident in the rating scheme, and in the drafting of the Valuation Act 2001. In particular, the definition of 'value' in section 3 of the Valuation Act 2001 make the distinction clear:-

"value" means—

- (a) in relation to property specified in Schedule 3 (other than property specified in paragraph 1(o) of that Schedule or falling within section 15 (4)), the value by reference to which a rate made in respect of the property has effect,

(b) in relation to property specified in the said paragraph 1(o), the value of the property for such purposes as stand designated for the time being by or under any enactment,

(c) in relation to property falling within section 15 (4), the value by reference to which a rate is struck on the property under section 55 of the Fisheries (Consolidation) Act, 1959 ,

and references to a valuation or revaluation carried out or made in relation to a property shall be construed accordingly.

45. The relevance of what is set out above is that the words in other enactments to rateable value are referring to the 'value' of the relevant property. They are not concerned with whether a property is subject to rates or not – which is a separate inquiry and a separate matter. To be specific, the words '*exceeds the rateable valuation of €253.95*' enacted in Schedule 3 of the Courts Act 1961 concern and refer to value, not its rate. "Rateable value" pertains to the value determined in accordance with the Valuation Act 2001, not the rate that is struck (or not) on the property by the rating authority carrying out the exercise described above.

46. As it happens, there are separate provisions which relieve the Commissioner from having to value Schedule 4 property, but it is those provisions rather than the fact that the property falls within s. 15(2) which achieve that effect.

47. For example, section 13 concerns the valuing of a property:-

"The Commissioner shall provide for the determination of the value of all relevant properties (other than relevant properties specified in Schedule 4) in accordance with the provisions of this Act."

48. Whereas, section 15(2) deals with property which is not rateable:-

“Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.”

49. Three points arise. First, , section 13 does not provide that property in Schedule 4 must not be given a value, rather it relieves the Commissioner of the obligation to provide for the determination of the value. *Second*, section 15 is not concerned with value, it is concerned rateability. Third, if s. 15(2) meant that both property was “not rateable” and could not be “valued” value, the parenthesis in section 13 would be wholly otiose.

50. Returning to the decision of the Court of Appeal, the Court deployed the expression “unrateable property” and then appeared to consign a meaning to it. The meaning consigned is that “unrateable” in law means incapable of having a value under the Valuation Act 2001. In this manner the Court arrived at the conclusion that Schedule 4 property could not have a value under the Valuation Act 2001. That meaning is not borne out by the provisions or the scheme of the Valuation Act 2001.

51. Under the 2001 Act a property is capable of having a value but yet not be subject to rates. Put another way the fact that a property is “not rateable” does not mean that it cannot, or will not, have a value. In that regard:-

- (i) An existing valuation within the meaning of the 2001 Act may have values for properties which are not rateable and that are exempt under Schedule 4: there is a value on the property on the list but no rate is struck in respect of the property
- (ii) A certificate under s. 67 may issue, a matter addressed in more detail below.

PROPOSED ANSWERS TO QUESTIONS POSED

52. The Attorney General’s position on the case stated questions raised by Baker J. are as follows:

- (i) If a property is not rateable by virtue of the Valuation Act 2001 or otherwise, is the Circuit Court's jurisdiction under S22(1) of the Courts (Supplemental Provisions) Act 1961 excluded?

For the purposes of determining whether the Circuit Court has jurisdiction under S22(1) of the Courts (Supplemental Provisions) Act 1961, the relevant question is whether the property has, or is deemed to have, a rateable valuation.

When the question is re-drafted by replacing the words "is not rateable" with the words "does not have a rateable valuation" and by adding before "the Valuation Act 2001" the words "S.67 or any other provision of" , the answer is "Yes".

- (ii) In the alternative does the Circuit Court have jurisdiction by virtue of the property not having a rateable valuation that exceeds €253.95?

As stated above, the Attorney General does not propose to suggest an answer to this question.

- (iii) Is the Circuit Court entitled to proceed to judgement, unless it is shown by evidence that there is a rateable valuation which exceeds €253.95?

This is a matter for the parties.

- (iv) If there is no certificate of rateable valuation how does the Court exercise its power to estimate rateable valuation under S31 of the County Officers and Courts (Ireland) Act, 1877?

No certificate is necessary. Section s. 31 is a matter for the parties.

- (v) Is a plea in a Civil Bill taken together with evidence on affidavit of a provisional assessment of rateable valuation, sufficient "*legal evidence*"

on which the Court can make an estimate of rateable valuation for the purposes of S31 of the 1877 Act?

This is a matter for the parties.

CONCLUSION

53. For the reasons stated herein it is submitted that the Order of the Court of Appeal should be altered, and the answers proposed substituted instead.

DAVID DODD BL
EOIN MCCULLOUGH SC

THE SUPREME COURT
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