

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered:	13/03/2014
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Doherty's (John) Application [2014] NIQB 30

IN THE MATTER OF AN APPLICATION BY JOHN DOHERTY FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW

TREACY J

Introduction

[1] By this application the applicant challenges the decision of District Judge Gilpin on 26 June 2013 refusing to dismiss ejectment proceedings brought against the tenants of the applicant's property at 32 Culmore Point, Londonderry.

[2] The applicant appeared as a personal litigant assisted by two friends. Mr McAteer appeared on behalf of the proposed respondent.

Background

[3] The applicant avers that he was hand delivered a letter from his tenants, Daniel and Claire Feeney, on 25 June 2013 requiring them to appear at Londonderry Magistrates Court on 26 June in respect of ejectment proceedings from the applicant's property with the applicant being named as the plaintiff. The applicant says that he was "totally shocked" that someone should use his name and claim that he was the plaintiff in Court proceedings. He never received any notification to attend the Court even though he had an interest in the property. He explained to the tenants that he had not initiated any proceedings to eject them from the property. His tenants granted him power of attorney so as to deal with the matter in Court. On 26 June 2013 the applicant attended Court in order to have the proceedings dismissed.

[4] The case was called and a barrister stood up and informed the Judge that he was there to represent the plaintiffs and that there didn't appear to be any defendants in the Court. The applicant was standing behind the barrister when the Judge told the barrister that he believed that there was someone else in Court. The applicant explained to the Court that he was listed as the plaintiff but that he had no part in bringing these proceedings and that he was happy with his tenants who were at all times compliant with the tenancy agreement.

[5] The applicant then requested the Judge to dismiss the application as there was no case to answer as he was content with the tenants. According to the applicant the Judge said that he wouldn't be dismissing anything and requested that both parties go outside and have a talk.

[6] Following what the applicant described as a fruitless discussion with the barrister the parties returned to Court when the applicant asked the Judge to dismiss the proceedings as the applicant had not issued proceedings against anyone. The Judge refused but indicated that he would remove the applicant as plaintiff from the proceedings.

[7] The applicant is gravely concerned at what transpired since he never issued ejectment proceedings against his tenants, says that the application was therefore invalid and brought under false pretences and that the case should have been dismissed on 26 June 2013.

[8] In his Order 53 Statement the grounds on which the application was mounted included a procedural impropriety, breach of legitimate expectation and breach of Art 6 ECHR.

[9] When the proceedings were lodged the Court directed that they be served on the appropriate proposed respondent requesting that they treat the proceedings as a pre-action protocol letter and requiring them to furnish a reply within 14 days. By reply dated 17 September 2013 the Departmental Solicitors Office explained the background to the ejectment proceedings which appeared to arise from a dispute in connection with the property at 32 Culmore Point between the applicant, his wife Mary Doherty and the financial company that provided a mortgage facility to them for that property. The parties to the Civil Bill ejectment on the title were described as follows:

“Between:

Mr John Doherty and Mrs Mary Doherty acting by
James Perrett and Matthew Hunt as fixed charge
receivers of Touchstone Lender Services, 2 Crescent
Office Park, Clarks Way, Bath BA2 2AF – Plaintiffs
and

(1) Daniel Feeney
(2) Claire Feeney
(3) Persons Unknown
of 32 Culmore Point Londonderry, Co Londonderry
Defendants"

[10] The Civil Bill is dated 3 April 2013 and is signed "TLT" Solicitors for the Plaintiff. That appears to be a reference to TLT NI LLP based at Scottish Provident Building 7 Donegall Square West Belfast.

[11] During the course of the oral hearing the applicant pointed out that the deed of appointment of receiver dated 23 January 2013 referred to a different entity namely the appointment of James Perrett and Mathew Hunt of Touchstone Corporate Property Services Ltd of 2 Crescent Office Park, Clarks Way, Bath BA2 2AF. The appointment of the receivers was purportedly in pursuance of powers conferred under a mortgage between the applicant and his wife and The Mortgage Business plc ("the bank"). In the copy of the deed of appointment of receiver furnished by the applicant to the Court the date of the mortgage document is not provided.

[12] The DSO's letter states that on 26 June the title of the Civil Bill was amended by the District Judge to remove the names of the applicant and his wife from the title of the proceedings and that he made a further Order adjourning the proceedings. These proceedings have remained adjourned pending resolution of both the extant judicial review proceedings and also a further set of proceedings brought by the applicant in the Chancery Division to discharge the receiver (ICOS NO. 2013/71436). In response to the proposed application the DSO's letter confirms that they are instructed that the District Judge does not take issue with most of the averments in the applicant's case. The District Judge accepts he was aware of the dispute between the applicant and the receiver as to how the ejectment civil proceedings came to be issued and whether the receiver had authority to refer to the applicant and his wife in the title to the proceedings. The District Judge accepts that he refused the application to dismiss the proceedings.

[13] As noted above the applicant had averred at para12 of his affidavit that the District Judge said that he wouldn't be dismissing anything prior to requesting the parties to go outside and have a talk. The DSO's response says:

"We are instructed that the District Judge cannot recall saying anything as definitive as that alleged at para 12 of the affidavit of Mr Doherty but believes he indicated or implied that the proceedings would not be dismissed at this stage."

[14] It is accepted that the names of the applicant and his wife were removed from the proceedings as named plaintiffs but the District Judge cannot recall whether that

was at the request of Counsel for the receiver or on his own initiative in accordance with Order 9 Rule 3 of The County Court Rules.

[15] The District Judge then adjourned the matter to allow Counsel for the receiver to file a skeleton argument addressing the entitlement of the receiver to recover possession of the property in question. In his affidavit the applicant objected to his removal as plaintiff in the proceedings on the basis that this removed all his rights as landlord. But as the DSO's letter points out and as Mr McAteer submitted the removal of the applicant as named plaintiff did not amount to a denial of his rights as a landlord since the receiver will still be required to satisfy the Court in due course that they have the lawful entitlement to require the defendants to leave the property named in the Civil Bill.

Discussion

[16] Insofar as the applicant considers that his removal from the proceedings removed all his rights as landlord, this is plainly misconceived. Before the receiver could obtain the order sought they will have to establish that they are the appropriate plaintiff and that they have lawful entitlement to require the defendants to leave the property named in the civil bill. This, no doubt, will involve, among other things, a careful consideration of the relevant mortgage between the applicant and his wife and the bank.

[17] The District Judge has wide powers under Order 9 of the County Court Rules to amend the proceedings. It was open to him to amend rather than dismiss the proceedings. Indeed, if he had dismissed the proceedings there would have been nothing to prevent the receiver from issuing a fresh set of proceedings in their own name.

[18] Mr McAteer dismissed any suggestion that the naming of the applicant as plaintiff without his knowledge or consent was either unusual or likely to confer any unjustified benefit on the receiver.

[19] The applicant has failed to establish any arguable ground upon which leave should be granted and accordingly the application is dismissed.