

Briefing

December 2017

Supreme Court delivers
key decision on
possession proceedings
in Circuit Court

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In July 2016, the Court of Appeal held that the Circuit Court does not have jurisdiction to hear possession proceedings regarding non-rateable residential properties which are neither principal private residences nor secured by housing loan mortgages. That decision had potentially significant implications for the timing and cost of possession proceedings, and cast doubt on the Circuit Court's jurisdiction in respect of other disputes concerning such properties.

The Supreme Court has now provided welcome clarity on the matter, and reached a different conclusion.

AFFECTED PROPERTIES

The Court of Appeal decision related to the following limited category of properties:

- » Property built after 2 May 2002.
- » Mortgage entered into before 1 December 2009.
- » Possession proceedings initiated before 31 July 2013.

The Supreme Court, in a judgment delivered on 12 December 2017, has concluded that the literal meaning of the relevant legislation is that the Circuit Court has jurisdiction, unless (a) the property actually has a rateable valuation

and (b) that the rateable valuation exceeds €253.95.

BACKGROUND

The case of *PTSB v Langan* involved six properties that were built after 2 May 2002 and mortgaged by Mr Langan in favour of PTSB before 1 December 2009. Each was a “*domestic premises*” for the purposes of the Valuation Act 2001 i.e. a “*...property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel*”.

The key question was whether the Circuit Court had jurisdiction in possession proceedings in respect of those six properties.

The Court of Appeal held that the Circuit Court's jurisdiction to deal with land-related matters at the time was limited to cases where the rateable valuation did not exceed €253.95. According to the Court of Appeal, that meant that, for the Circuit Court to have jurisdiction, the properties needed to have a rateable valuation (albeit that it could not exceed €253.95). As none of the six properties were rateable, and therefore did not have rateable valuations, the Court of Appeal held that Circuit Court did not have jurisdiction.

Delivering the Court of Appeal's judgment, Hogan J observed that while the judgment related to possession orders in respect of "domestic premises", the conclusions would lead to "unfortunate and unintended" results and the judgment had "even the more serious consequence that the general jurisdiction of the Circuit Court to deal with property disputes (i.e. other than those concerning applications for possession) concerning domestic dwellings is, at least, now open to question."

WHAT HAPPENED NEXT?

On 17 November 2016, the Supreme Court granted PTSB leave to appeal on the basis that the decision involved a matter of general public importance.

THE SUPREME COURT DECISION: KEY QUESTIONS

In delivering the decision of the Supreme Court, the Chief Justice commented that the issue was a very net one:

What jurisdiction does the Circuit Court have where a residential property does not have a rateable valuation?

For the Supreme Court, the case came down to an issue of construction:

How should the wording of the section whereby property with a rateable valuation exceeding €253.95 is excluded from the Circuit Court's jurisdiction be interpreted?

THE SUPREME COURT DECISION: THE LITERAL MEANING WAS CLEAR

The Chief Justice observed that the literal meaning of that exclusion was clear:

If a rateable valuation exceeds the €253.95 threshold, the exclusion applies.

A property which does not have a rateable valuation cannot be taken to have a rateable valuation which exceeds the €253.95 threshold.

THE SUPREME COURT DECISION: THE CIRCUIT COURT HAS JURISDICTION (SUBJECT TO A LIMITED EXCEPTION)

As a result, the Chief Justice was satisfied that the Circuit Court did have jurisdiction "in relevant property related cases on a general basis but subject to an exclusion which applies only where the rateable valuation exceeds the threshold...the literal meaning requires that the Circuit Court be held to have jurisdiction unless it is the case that the property in question actually has a rateable valuation and that the rateable valuation exceeds the threshold."

The Chief Justice acknowledged that the literal meaning will result in the Circuit Court being able to hear "big" cases, but the alternative would be

that "small" cases would have to be heard in the High Court.

IMPACT

The Supreme Court decision means that the Circuit Court has jurisdiction in cases where:

- » the dwelling was built after 2 May 2002;
- » the mortgage was entered into before 1 December 2009; and
- » possession proceedings were initiated before 31 July 2013,

provided that the property does not actually have a rateable valuation which exceeds €253.95.

ESTABLISHING JURISDICTION: WHAT WILL A PLAINTIFF NEED TO DO?

The Chief Justice observed that the plaintiff in possession proceedings in respect of the above types of property must establish that the Circuit Court has jurisdiction by either:

- » producing a certificate of rateable valuation confirming that the rateable valuation of the property does not exceed €253.95; or
- » producing admissible evidence that the property does not actually have a rateable valuation or a deemed rateable valuation.

A plaintiff will not be able to satisfy the second limb above by simply establishing that the property is not rateable. That is because there are certain circumstances in which a property is not "rateable" under the 2002 Act, but may still have a rateable valuation. Instead, the plaintiff must

prove that the property does not have a rateable valuation, deemed or otherwise.

POSTSCRIPT: PROCEEDINGS COMMENCED AFTER 11 JANUARY 2017

Separately, following the Court of Appeal decision in *PTSB v Langan*, the [Civil Liability and Courts Act 2004 \(Commencement\) Order 2017](#) was signed into law. As a result, when possession proceedings are commenced after 11 January 2017, the Circuit Court will have jurisdiction where the market value is €3,000,000 or less.

FURTHER INFORMATION

The Court of Appeal judgment is [here](#).

Our August 2016 briefing on the Court of Appeal judgment is here:

[Possession Proceedings for Residential Properties: Important Update.](#)

The Supreme Court judgment is [here](#).



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