

THE HIGH COURT

[2023] IEHC 459

[Record No.: 2016/6/CA]

MARS CAPITAL FINANCE IRELAND DAC

PLAINTIFF

AND

CIARA O REILLY AND BRENDAN PROCTOR

DEFENDANTS

JUDGMENT of Ms. Justice Siobhan Phelan, delivered on the 26th day of July 2023.

INTRODUCTION

1. This is the Plaintiff's application to dismiss the First Named Defendant's Appeal against the Order for Possession made by the Circuit Court on the 3rd of November 2015 for want of prosecution either pursuant to O.122, r.11 of the Rules of the Superior Courts, 1986 (as amended) or the inherent jurisdiction of the Court. The First Named Defendant is a lay litigant representing herself in these proceedings.

TIMELINE

2. The following timeline was prepared on behalf of the Plaintiff and is supported by the papers handed into Court.

Event	Date
Circuit Court Proceedings issue	29 th of November, 2013
Order for Possession granted	3 rd of November, 2015
Application to extend time to appeal filed	19 th of January, 2016
Order granting extension of time to appeal	8 th of April, 2016

Notice of Appeal filed	28 th of April, 2016
Plaintiff Substitution Order	9 th of May, 2022
Motion to dismiss issued	31 st of January, 2023

3. As apparent from the foregoing, the period of inaction relied upon by the Plaintiff which I must consider in the context of this application is between 28th of April, 2016 and 31st of January, 2023 being a period of almost 7 years.

EVIDENCE

4. This application is grounded on the Affidavit of Ronan Hopkins who is a manager employed with the Plaintiff. In his Affidavit Mr. Hopkins refers to the filing of the First Named Defendant's Notice of Appeal in April, 2016 and the fact that no step whatsoever has been taken by her to prosecute her appeal since that time. He does not, however, refer the Court to any enquiries directed to the First Named Defendant as to why the appeal had not been progressed. I understand from counsel for the First Named Defendant that no such enquiries occurred. At paragraphs 12 and 13 of his Affidavit he elaborates on the prejudice to the Plaintiff which flows from the fact that the Defendants have defaulted on meeting their repayment obligations in consequence of which Mr. Hopkins says the Plaintiff is *prima facie* entitled to an order for possession pursuant to the provisions of s. 23(7) of the Registration of Title Act, 1964 (as amended). It is further averred that the level of indebtedness on foot of the original loan is now significantly higher than at the time proceedings were initially instituted in the Circuit Court in 2013 and that the Plaintiff is suffering an ongoing and ever-increasing prejudice by reason of the First Named Defendant's failure to prosecute her appeal.

5. Although the First Named Defendant filed a replying affidavit to this application, her affidavit focuses on arguments which she seeks to ventilate in seeking to set aside the Order for Possession already granted against her by the Circuit Court and not the question of delay. In broad terms she asserts her rights *qua* consumer and takes issue with:

- (i) the constitution of the proceedings in circumstances where EBS Limited who were the moving party in the Circuit Court proceedings no longer exists and no order has been provided to her in respect of the change from EBS Limited to EBS DAC; and

- (ii) the entitlement of the substituted Plaintiff, a credit servicing firm, to pursue her in respect of the loan agreement with the EBS Limited. In this regard she relies on s. 28 of the Central Bank Act, 1997 (as amended).

6. The First Named Defendant sought to provide an explanation for delay on her feet through submissions to the Court. In the interests of expediency, rather than adjourn the matter for her to put her account on affidavit and with the consent of the Plaintiff, the First Named Defendant was sworn in and heard in oral evidence.

7. In her oral evidence she confirmed significant engagement on her part with agencies such as MABS and New Beginnings and others to resolve debt issues which arose in the context of a background scenario of family law difficulties, although she was not specific about when this occurred. She explained that she has been involved in other legal proceedings seeking to regularise her financial situation. She testifies that she has always been vigilant in attending at court hearings and she has never sought to avoid dealing with litigation with which she is involved. She explained that she has a full-time job and parenting duties. She says that she has not had co-operation from the Second Named Defendant in dealing with these proceedings. She told me that when she attended in the Central Office to file her Notice of Appeal in April, 2016 she was informed that notification of a date would be sent to her in the post. She claims she did not understand from what she had been told that there was any obligation on her to take any active step and she believed that a date would issue in due course.

8. When questioned as to why she did not follow up in relation to a date for hearing, the Plaintiff indicated that in the meantime she was busy with other proceedings in the family law context and with managing life as a lone working parent. She pointed generally to other health related difficulties attributed by her to the burden of her situation. It is unnecessary to detail these difficulties for present purposes and there was not medical evidence presented. She said that more recently an acquaintance assisting her in putting together an affidavit for an application in respect of marital properties advised her that the Central Office online records suggested that her appeal had been adjourned. She presumed that this meant that a date had been assigned without notice to her. Through the assistance of counsel for the Plaintiff, however, it appears that the Central Office records do not note an adjournment but that the

appeal is awaiting certification. The First Named Defendants says that she did not understand this to be the position.

9. The First Named Defendant confirmed that she had received no communication from the Plaintiff enquiring as to lack of progress of her appeal and she reiterated that as far as she was concerned, she had done everything she could to prosecute her appeal and was simply waiting her turn for a date to be assigned.

10. In addition to the Affidavit evidence sworn on behalf of the Plaintiff and First Named Defendant for the purpose of this application and the oral testimony of the First Named Defendant, I also had the benefit of a book of papers including the pleadings before the Circuit Court and the affidavit evidence supporting the First Named Defendant's application for the DAR of proceedings before the Circuit Court which occurred in her absence and her application for an extension of time from the Master of the High Court within which to pursue this appeal.

11. From the book of papers, it appears that an order for possession was obtained from the Circuit Court in the First Named Defendant's absence in circumstances where she understood that the date assigned for hearing was the 4th of November, 2015 when, in fact, the matter proceeded unbeknownst to her on the 3rd of November, 2015. It is clear from this affidavit evidence that there was an issue regarding service on the First Named Defendant of a letter advising her of the correct hearing date. It appears that this only came to light upon the First Named Defendant's application to the Circuit Court for the digital audio recording (DAR) when she became aware that a possession order had been granted in her absence. This sequence of events was in turn relied upon on affidavit before the Master of the High Court in seeking an order for an extension of time within which to appeal. This order was granted in April, 2016.

12. It is also clear from the book of papers that while an order was made by the High Court (Hanna J.) substituting the Plaintiff for the EBS Limited in May, 2022, this order was made on foot of an *ex parte* application and was not on notice to the First Named Defendant. It appears that the First Named Defendant was not served with the papers grounding the application. Indeed, it is not clear that the Plaintiff ever served a Notice of Intention to Proceed before making this application, as required under O.122, r.11 of the Rules of the Superior Courts where any party intends to proceed after a lapse of time of more than one year.

SUBMISSIONS

13. In submissions before me the Plaintiff relies on the decision of McMenanim J. in *McGarry v. Minister for Defence & Ors* [2016] IESC 5, paras. 37 to 38 where he stated:

“It is clear from the case law which has been cited to the Court, that two overlapping strands can be found in the jurisprudence. First, there are the authorities derived from the judgments of Henchy J. in O’Domhnaill v. Merrick [1984] I.R. 151. This lays emphasis on the inherent duty of the courts, arising from the Constitution itself, to put an end to what are termed ‘stale claims’ in order to ensure the effective administration of justice, and basic fairness of procedures.

The second strand of authority derives from the judgment of this Court in Primor...”

14. The Plaintiff further relies upon principles which a court should consider on an application to dismiss for want of prosecution as set out by Hamilton CJ. in *Primor plc v. Stokes Kennedy Crowley* [1996] 2 IR 459 namely:

“(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;

(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;

(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;

(d) in considering this latter obligation the court is entitled to take into consideration and have regard to:

(i) the implied constitutional principles of basic fairness of procedures,

(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,

(iii) any delay on the part of the defendant — because litigation is a two party operation, the conduct of both parties should be looked at,

(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,

(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,

(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,

(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business.”

15. It is the Plaintiff's position that a delay in the prosecution of an appeal of close to 7 years is inordinate. It is contended that inadequate explanation has been provided for delay (none on affidavit) and that from the balance of justice perspective, the matters identified as giving rise to a defence to the application for a possession order lack merit.

16. The First Named Defendant relies in her submissions on the fact that she was never heard in respect of the grant of the Possession Order in the Circuit Court as she was not on notice of the hearing date (a contention for which there is evidential support in the papers before me and not contested on behalf of the Plaintiff before me). The First Named Defendant submits that as far as she was concerned, she had paid the court fee and filed her Notice of Appeal and was simply awaiting the allocation of an appeal hearing date. She was unaware that she was required to take any further step and whilst she acknowledges she might have made enquiries

as to what was happening, she was busy managing other issues in her life (including other proceedings) as well as holding down a full-time job and parenting her child.

17. The First Named Defendant placed some emphasis in her submissions on lines of defence which she considers to be open to her in seeking to have the Possession Order set aside on appeal. She points to the fact that while the Plaintiff has been substituted in the title to the proceedings, there is no order before the Court amending the title of the proceedings from EBS Limited to EBS DAC even though EBS Limited converted to a Designated Activity Company in September, 2016, ever before an interest in the charge owned by the EBS Limited was transferred to the Plaintiff, an event which seemingly occurred in 2020. She also relies on the recent decision of *Mars Capital Finance Ireland DAC (In substitution for EBS Mortgage Finance) v. John Temple* [2023] IEHC 94 where the High Court (Simons J.) refused summary judgment on appeal but directed plenary hearing in circumstances where a question arose as to whether the Plaintiff could satisfy the proofs for an order for possession. The First Named Defendant relies on parallels between this case and her own.

18. In reply, it was not accepted on behalf of the Plaintiff that the decision in *Mars Capital Finance Ireland DAC (In substitution for EBS Mortgage Finance) v. John Temple* [2023] IEHC 94 assists the First Named Defendant as it was submitted that the question for the High Court on appeal is whether EBS Limited was entitled to an order for possession when the matter came before the Circuit Court. Reliance was further placed on the subsequent substitution order made by Hanna J. in response to any issue as to the proper constitution of the proceedings.

19. In submissions on behalf of the Plaintiff it is also disputed that rights under European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (“the Unfair Terms and Regulations”) avail the First Named Defendant *qua* consumer when regard is had to the decision in *Permanent TSB v. Davis* [2019] IEHC 184 and the main subject matter of the loan agreement which bring the complaints identified on behalf of the First Named Defendant outside the terms of the Directive and the Regulations.

20. The Plaintiff argues that were the appeal dismissed with the result that the Order for Possession stood as a final order, it would still be necessary for it to apply for leave to execute. The Plaintiff relies on the fact that the First Named Defendant would have an opportunity in

that context to raise issues regarding ownership of the loan and the Plaintiff's entitlement to execute on foot of the Order for Possession made.

21. Insofar as the First Named Defendant contends that the Plaintiff is somehow barred from prosecution of these proceedings by reason of s. 28 of the Central Bank Act 1977 as amended by the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015, counsel for the Plaintiff points out that s. 28 of the Act of 1977 has been further amended by the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 and the Consumer Protection (Regulation of Credit Servicing Firms) Act 2022. It is pointed out that the amendment to s. 28 relied upon by the First Named Defendant regarding, *inter alia*, the enforcement of a credit agreement no longer forms part of s. 28 of the Act following the amendments to that provision made in 2018 and 2022. It is the Plaintiff's position that it is and has at all material times been authorised and regulated by the Central Bank of Ireland, the competent authority for financial services regulation in Ireland. It is contended that the Plaintiff is not acting in a capacity as a credit servicer but is the owner of the debt and charge the subject matter of these proceedings such that even if the provisions relied upon by the First Named Defendant remained in law, they could not avail her of a defence to the proceedings.

22. In response to queries from me, counsel for the Plaintiff confirmed that it was not the practice at the time the Circuit Court appeal was lodged in this case for dates to issue "*out of the office*". Instead, in accordance with the then established practice, it was necessary to put the other parties to the appeal on notice of an intention to mention the matter before the Court and make application for a date. When asked whether it would not have been as open to the Plaintiff as it was to the First Named Defendant to make this application or even to seek to mention the matter for an explanation for delay, counsel for the Plaintiff submitted that it was not for the Plaintiff to bring on an appeal against itself.

DISCUSSION AND DECISION

23. There is now a very significant body of jurisprudence guiding the exercise of the Court's discretion to dismiss proceedings on delay grounds, most recently, two decisions of the Court of Appeal in *Gibbons v N6 (Construction) Limited* [2022] IECA 1, as cited with approval by the later Court of Appeal decision of *Cave Projects Limited v Kelly* [2022] IECA 245. In both *Gibbons* and *Cave* the Court of Appeal helpfully engaged in an extensive review

of the authorities. As set out in *Cave*, the starting point on an application of this kind is a consideration of the three-limb test set out in *Primor*, summarised by Barniville J. (as he then was) in *Gibbons* at para. 79 as follows:

"There are three limbs to the Primor test. The defendant must first establish that the delay on the part of a plaintiff in the prosecution of the claim has been inordinate. If it establishes that the defendant must then establish that the delay has been inexcusable. If the defendant establishes, or if it is agreed, that the delay is both inordinate and inexcusable, the court must exercise a judgment on whether, in its discretion, on the facts, the balance of justice is in favour of or against the proceeding of the case. (per Hamilton C.J. in Primor at para.(e) on p. 475)".

24. As regards the balance of justice, Barniville J. noted in *Gibbons* (at para. 82) a list of factors which the Court was entitled to consider in determining this issue as set out by Hamilton CJ. in *Primor*. These include matters such as basic fairness of procedures and the effect of any prejudice on the proceedings. Arising from the case-law reviewed so fully in *Gibbons* and by way of summary it can be said that when assessing where the balance of justice lies for the purposes of considering the third limb of the *Primor* test, it is necessary for the Court to take into account a wide range of factors the nature of which will vary depending on the facts of a particular case. The onus to establish that the balance of justice lies against permitting the proceedings to continue rests on the moving party.

25. Addressing the treatment of the applicable test in the case-law since *Primor* in his judgment in *Cave*, Collins J. sought to emphasise several points in an extensive passage (at para. 36 of his judgment). In particular, he emphasised that an order dismissing a claim is a far-reaching one and that it would seem to follow that such an order should only be made in circumstances where there has been significant delay and where, because of that delay, the court is satisfied that the balance of justice is clearly against allowing the claim to proceed. He observed:

"the court must be satisfied that the "the hardship of denying the plaintiff access to a trial of his claim would, in all the circumstances, be [.]proportionate and [.]just"

26. Collins J. further focussed on the fact that the question of prejudice must be the forefront of the Court's considerations when weighing where the balance of justice lies, albeit that prejudice is not confined to "*fair trial*" prejudice. He added that the absence of any specific prejudice or concrete prejudice may be a material factor in the court's assessment even though general prejudice may suffice. He reiterated that assertions of general prejudice must have a sufficient evidential basis and fall to be carefully and fairly assessed. Only such prejudice as is properly attributable to the period of inordinate and inexcusable delay for which the plaintiff is responsible ought to be considered in this context. He reiterated that the jurisdiction is not punitive or disciplinary in character. Having elaborated on points he wished to emphasize in the case-law, Collins J. observed the risks of a tick box approach and overcorrection before concluding as follows:

"All of this suggests that courts must be astute to ensure that proceedings are not dismissed unless, on a careful assessment of all the relevant facts and circumstances, it is clear that permitting the claim to proceed would result in some real and tangible injustice to the defendant."

27. I adopt the statement of principles distilled by the Court of Appeal in both *Gibbons* and *Cave* and hereinafter seek to apply these principles to the facts and circumstances of this case.

Whether Delay Inordinate

28. I have little difficulty agreeing with the Plaintiff's characterisation of a delay of 7 years as being inordinate. It clearly is. These are possession proceedings brought under s. 62(7) of the Registration of Title Act 1964 which requires the proceedings to be heard in a summary manner. Accordingly, the Legislature envisages that proceedings of this nature should be heard in an expedited manner. This has not occurred.

Whether Delay Excusable

29. While the First Named Defendant made no effort in her replying affidavit to excuse or explain the inordinate delay in the prosecution of this appeal, this lacuna was addressed to some extent through her oral testimony, a facility afforded to her in view of her status as a lay litigant, the non-objection of the Plaintiff and the interests of expediency. While some explanation has

been provided and it is understandable that a lay litigant who was assured that a hearing date would issue might not pursue the progression of an appeal more vigorously but might await communication of a date particularly when dealing with other litigation and life stresses, the explanation loses force when the delay becomes very protracted without evidence of further enquiry. It is not acceptable for an appellant, even a lay litigant who may have been misinformed as to next steps required to progress an appeal, to simply lodge an appeal and make no further enquiry in relation to its progression over a protracted period, in this case more than six years. While an excuse has been offered, I do not find that a delay of this magnitude is “*excusable*”. The explanation for what happened is, however, a factor I propose to weigh in balancing the interests of justice in this case.

Balance of Justice

30. Turning to consideration of the balance of justice, it is not in dispute that the First Named Defendant has defaulted on mortgage repayments and has not made payments in many years. Arrears continue to amount. The Plaintiff has deposed to the prejudice it has suffered and continues to suffer by reason of the First Named Defendant’s failure to prosecute her appeal. When these proceedings issued the Defendant’s indebtedness amounted to €392,173.00 whereas the debt has now increased to €581,354.94 with the last repayment having been made over 10 years ago on the 22nd of April, 2013. On one view of it, of course, this is more of a prejudice to the First Named Defendant than it is to the Plaintiff, depending on whether the debt is recoverable or not and what impact a timelier disposal of the property would have had on the debt.

31. There are several factors in this case which I consider distinguish it from others in which the Court has exercised a discretion to dismiss for want of prosecution. I attach some weight to the fact that the First Named Defendant is a lay litigant. On the other hand, the Plaintiff, and its predecessor, are commercial entities, legally represented before the Court. It is evident that there is no equality of arms between the different parties to this action. I also consider it material that while the First Named Defendant is the Appellant, these remain the Plaintiff’s proceedings. As the appeal proceeds as a hearing *de novo*, the Plaintiff as respondent to an appeal bears a fresh burden to establish its case. It was always open to the Plaintiff to seek to mention this appeal on notice to the First Named Defendant so that the appeal in this case could be progressed under Court direction. While the Plaintiff is correct that there is an onus on an

Appellant to progress her appeal, the Plaintiff also has an interest in achieving finality in the proceedings they instituted such that they might be expected to agitate for progress.

32. I find it striking that neither the Plaintiff, nor its predecessor, made any enquiry over the course of more than 6 years in relation to the progress of the appeal. The Plaintiff could have called on the First Named Defendant to apply for a date or it could itself have mentioned the matter before the Court for the purpose seeking to progress the appeal. It did neither. Indeed, no warning letter was sent to the First Named Defendant before the Plaintiff engaged the nuclear option of seeking to have the appeal dismissed. In fact, the only correspondence I understand the Plaintiff to have sent in relation to the proceedings during the period between the matter being finalised in the Circuit Court and the bringing of the motion before me was to serve the First Named Defendant with the order substituting it as Plaintiff. The failure on the part of the Plaintiff to take normal steps such as writing to the First Named Defendant and/or applying to the Court either for directions or for a date itself before proceeding to move to have the proceedings struck out suggests that this application may not be motivated by a real concern about delay but may instead be used as an opportunity to shut out the First Named Defendant's defence of the action taken against her.

33. Given that the First Named Defendant's enjoys a constitutionally protected right to defend a claim against her, the factor that weighs most heavily with me in balancing the interests of justice on this application is that the Plaintiff's predecessor obtained an Order for Possession in respect of her home in the Circuit Court in the First Named Defendant's absence. This appears to have occurred in circumstances where she had been a participating party and had asserted a wish to defend herself against such an Order. Indeed, at the time the Order for Possession was granted, the First Named Defendant's application for discovery was pending before the Circuit Court. It further appears that the Order for Possession was made without proper notice to her or at least in circumstances where there is a serious concern in this regard given the First Named Defendant's affirmed lack of knowledge as to the date and the evidence or lack thereof as to service. This means that despite appearing to the proceedings and taking an active role in respect of same, there is a real and serious doubt as to whether First Named Defendant's rights of audience before the Court in defence of the claim taken against her have been respected notwithstanding the potential resulting interference with her constitutionally protected interest in her home and property. Given the importance of what is at stake for the First Named Defendant and the failure to hear her at first instance, I consider that there is an

added importance to the existence of an avenue of appeal and a *de novo* hearing as it is only through her appeal that the First Named Defendant's constitutional rights, including her right to procedural fairness, may be vindicated.

34. In her replying Affidavit the First Named Defendant has raised issues which relate to her defence of the application for an Order for Possession. The merit of this line of defence is not a matter upon which I make any determination as the motion before me relates to want of prosecution only, but I accept that it has some bearing. On the one hand it is of some significance that a defence has been identified by the First Named Defendant which she is entitled to have determined on its merits and in accordance with law on the facts and evidence in her case. On the other hand, a weakness or lack of force in the identified lines of defence can be relied upon to weigh against the maintenance of the proceedings. I do not accept the Plaintiff's contention that the First Named Defendant's rights of defence can be vindicated through a hearing in response to an application for leave to execute in circumstances where the Order for Possession stands as a final order by reason of the strike out of the appeal. The entitlement to be heard in respect of the making of an Order for Possession cannot be replaced or substituted by a right to be heard in respect of an application for leave to execute as the test to be satisfied for each order is not the same. Furthermore, on an appeal *de novo* the onus remains on the Plaintiff to establish a *prima facie* entitlement to the orders made before the burden shifts to the First Named Defendant to identify a defence. The First Named Defendant is entitled to require the Plaintiff to establish a *prima facie* case irrespective of whether it has a stateable defence to the application.

35. In weighing competing justice considerations, I cannot overlook that the order of the Circuit Court was made in the First Named Defendant's absence notwithstanding her to prior engagement with the proceedings and that she has identified lines of defence which she wishes to argue in seeking to have the Order for Possession set aside. It seems to me that the interests of justice require that the First Named Defendant be heard before an Order for Possession is finalised against her given the evidence before me that she did not hide from the proceedings but engaged in the defence of same and, despite this, was not notified of the date for hearing in the Circuit Court.

36. On all the facts and circumstances of this case and bearing in mind that the First Named Defendant is a lay litigant, was misinformed as to the necessary next steps when she filed her

appeal, received no correspondence from the Plaintiff in relation to the lack of progress of the appeal or other warning that the Plaintiff was concerned by delays, has identified lines of defence which she wishes to argue and have determined and has been denied a proper hearing at first instance, I am satisfied that it would be contrary to the interests of justice to dismiss these proceedings on grounds of delay. I have concluded that it would not be proportionate or just in all these circumstances to deny the First Named Defendant an entitlement to prosecute her appeal or, put otherwise, to require the Plaintiff to establish a *prima facie* entitlement and to be heard in defence of the claim against her.

CONCLUSION

37. It is not in dispute that the First Named Defendant has defaulted on mortgage repayments and has not made payments in many years. Arrears continue to amount. The appeal has been pending for more than seven years at this stage and there is no doubt that an application to dismiss was open to the Plaintiff. Further delay in the prosecution of this appeal cannot be tolerated. While I have decided to refuse the Plaintiff's application, I remain mindful of the inherent public interest in ensuring the timely and effective administration of justice. In consequence I will retain seisin of this matter for case management purposes until the matter is ready for a date.

38. I will adjourn this matter before me to the beginning of next term so that the parties can engage in the meantime to ensure that books of appeal have been lodged as required (including pleadings and all other documents required for the hearing of the Appeal with a sufficient index, a true copy of which index shall have been previously furnished to every other party affected by the appeal) and the appeal certified as ready and set down for hearing. When I am satisfied that there is no impediment to a Court proceeding to hear and determine the appeal, I will transfer the matter to the next available Non-Jury/Judicial Review list for the purposes of the allocation of a hearing date. I will hear the parties in respect of the final form of order and such further directions as may be appropriate.