

THE HIGH COURT

[2023] IEHC 557

COMMERCIAL

Record No. 2020/8503P

BETWEEN

**MARTIN KEANE AND
SLATTERY'S LIMITED AND
TRADITIONAL IVEAGH MARKETS LIMITED
AND IVEAGH MARKETS HOTELS LIMITED**

PLAINTIFFS

AND

**ARTHUR EDWARD RORY GUINNESS otherwise
ARTHUR EDWARD RORY IVEAGH**

DEFENDANT

AND

DUBLIN CITY COUNCIL, IRELAND, AND THE ATTORNEY GENERAL

NOTICE PARTIES

**EX TEMPORE JUDGEMENT of Mr Justice Twomey delivered on the 12th day
of October, 2023**

Introduction

This is a case in which neither the plaintiffs (collectively referred to as “**Mr. Keane**”) nor the defendant (“**Lord Iveagh**”) could be said to have a traditional or clear title to the Iveagh Markets (“**Property**”).

Nonetheless, both are asserting that they have sufficient title to bring trespass proceedings against the other.

Mr Keane has sued Lord Iveagh for trespass and Lord Iveagh counterclaimed against Mr. Keane for trespass, while also suing Dublin City Council as part of that counterclaim (in which Lord Iveagh seeks a declaration that he is the owner of the Property). There is also a claim in the proceedings that the Forcible Entry Act, 1634 is unconstitutional.

In very broad terms, Mr. Keane alleges that he has title because he entered into possession sometime after 1996, after winning a competition organised by Dublin City Council or its predecessor, and after paying €2 million to it. This was done in the expectation that Dublin City Council would be able to transfer title to the Iveagh Markets to him. However, this has not occurred to date because of title issues.

On the other hand, Lord Iveagh claims that he succeeded to the title, originally held by his great grandfather as a result of becoming entitled through succession to the reversionary interest, which allegedly reverted to him when the alleged owner of the title, Dublin City Council or its predecessors, failed to comply with a condition subsequent attaching to the grant of the title, regarding the use of the market for certain specific public purposes.

For its part, Dublin City Council appears to be claiming that neither of these parties are entitled to title, since it claims in these proceedings that it has title to the Iveagh Markets.

In this preliminary application, Mr. Keane and Lord Iveagh have requested a modular trial, dealing with the ownership issue as the first module and the remaining issues in a separate module.

The State is agnostic about a modular trial but if there is to be a modular trial, it seeks to have the constitutional issue, namely a challenge to the constitutionality of Forcible Entry Act, 1634 addressed in the final module.

Constitutional issue

The State made uncontroverted submissions (in reliance on Humphrey J.'s judgment in *North East Pylon v An Bord Pleanala* [2016] IEHC 300) that it is an accepted principle that in litigation one should reach constitutional issues last. This is because, *inter alia*, of the saving in time and costs to the State in having to deal with a constitutional challenge, if it turns out that after all other issues have been considered, the constitutional issue has become moot.

The State also made uncontroverted submissions that it was for the party, arguing for a departure from this principle, to persuade the Court that there were exceptional circumstances warranting such a departure.

In this case, there was no objection from any of the parties to the constitutional issues being dealt with in the final module, if there is a modular trial.

For this reason, and as there is a chance that the constitutional issue will become moot, it seems to this Court that the State should be insulated from the time and costs of being involved in the first module.

Thus, if there is to be a modular trial, the constitutional issue will be dealt with in the last module.

Modular trial

As regards the question of a modular trial, the only party objecting to it is Dublin City Council, as it believes that any decision on the first module regarding ownership of the Iveagh Market will be appealed by whichever party loses and this will lead to a delay in the overall resolution of the dispute regarding the Iveagh Markets.

This Court accepts that this is a possibility. However, it is not the only possible/probable consequence of a modular trial.

Firstly, it is possible, if not probable, that by dealing with the ownership issue alone as a first module, the trial could come to court much quicker, than if there was to be a full unitary hearing of all issues.

Secondly, it is possible that a very clear decision on the title issue, at that modular trial, could lead to the end to the substantive dispute between the parties. For example, that might be the case if the first module led to a very clear finding that neither Mr. Keane nor Lord Iveagh had title to the Iveagh Markets.

The reason a modular trial dealing with the title issue may have this effect, is because it seems to this Court that the key issue in this dispute is who owns the title, whether that be Mr. Keane or Lord Iveagh or none of them (which might mean Dublin City Council is the owner). For this reason, it seems to this Court that so much will be

clearer for all parties, once this single issue is decided. As already noted, a decision on the title issue has the potential to lead to the other issues being moot (e.g. in relation to claims for damages arising from alleged damage to the property).

Similarly, a decision one way or the other in the first module could greatly facilitate a settlement of those issues and other ancillary issues.

It is this potential saving of court time and parties' costs which is a key factor in this Court's decision to order a modular trial.

In addition, it is clear that the title issues, particularly in relation to the issue of how Lord Iveagh succeeded to the title, are arcane, complex and involve legal and factual issues, and so the title issues are far from straight forward. For this reason, it could not be said that these issues are so insignificant as *not* to merit being separated from the rest of the case.

Also, this Court does not see any prejudice to any of the parties in taking a modular approach and so it concludes that a modular trial in this case is in the interests of the administration of justice.

The modules

As regards that first module, the primary issue in these proceedings, which are mutual trespass proceedings, is clearly the title of the two parties alleging trespass, i.e. Mr. Keane and Lord Iveagh.

As previously noted, if neither party has title to the property this is the end of the bulk of the issues between the parties (although there are some ancillary reliefs claimed which may have to be dealt with).

For this reason, the first module will consider primarily the title of Mr. Keane and Lord Iveagh to the Property. That could be the end of the matter. For example, if neither party has title, it may not be necessary for this Court to determine which other party has title.

However, as part of this module, Dublin City Council will be able to assert its claim to title, as it may decide that this Court should hear its submissions and evidence regarding its alleged title to the Property, before determining whether Mr Keane or Lord Iveagh has title or if necessary, determining that Dublin City Council is the owner of the title to the property.

In this regard, submissions were made on behalf of Mr. Keane that he had no issue with Dublin City Council's title being dealt with in the first module.

Similarly, counsel for Lord Iveagh favoured this issue being dealt with in the first module, as he noted that Dublin City Council's title was an issue in the proceedings, since Dublin City Council had pleaded in its defence to Lord Iveagh's counterclaim that it has title to the Property.

In any event, it is relevant to note that to establish Mr Keane's title, it seems likely that Mr. Keane will have to deal with the title of the party from whom he obtained title, which seems to be Dublin City Council. In this sense it will also be necessary for some consideration, at least, to be given in the first module to the present or past title of Dublin City Council to the Property.

Thus, as part of the first module, Dublin City Council will be entitled, if it chooses, to establish that it has title.

Of course, if Lord Iveagh cannot establish his title, through succession, his proceedings may be at an end and it may not be necessary for Dublin City Council to establish its title or for this Court to make a determination of that issue.

Indeed, as noted by counsel for Mr. Keane, it is possible that someone other than Lord Iveagh succeeded to the interest he is claiming, and if such a party exists, she is not in court to contest a finding that Dublin City Council has title to the Property.

In this regard, it is to be noted that the primary purpose of this Court is not to conduct an inquiry as to who is the owner of the Iveagh Market, but rather to deal with the trespass proceedings. Of course, it is possible that when dealing with the trespass proceedings, it will also end up concluding who has title to the Property.

Conclusion

The Court sought submissions regarding the value of the Property from the parties on the second day of the hearing. While these values were presented as guesstimates, it seems that in light of the very high cost the remedial work which has to be undertaken to the Property, it could in fact have a market value of nil or indeed a negative value to an arms' length purchaser.

Yet at the request of this Court, counsel provided a guesstimate of €1.2 million, as the possible legal costs to be paid by a losing party (to his own lawyers and the other parties' lawyers) if the trial were to last for 8 weeks.

The notion that parties could spend €1.2 million (quite apart from the wasted management time) over an asset with arguably zero value does raise questions for all the parties involved in this case.

It is important to point out that mediation has been attempted previously. However, in light of this Court's decision on the modular trial and the ventilation in court (in the presence of Mr. Keane and Lord Iveagh) of the likely time and costs involved in this litigation, bearing in mind the values at stake, it is hoped that the parties (and Dublin City Council to the extent, if any, that it might have any influence) might consider again the merits of a mediation/settlement of these proceedings.

This Court would urge such an approach because regrettably, it is often the case that only when it is too late, i.e. after a case has completed (and any appeals are completed, which will add to the costs), do the parties fully appreciate the amount of management time and money incurred in litigation, relative to the value of the dispute.