

## Recent Real Estate Case Law Review



### **Hogan v Byrne & Anor; Laffoy J, [2008] IEHC 287**

The plaintiff sought an order under s.38 of the Arbitration Act 1954 to set aside or, alternatively, an order under s.36 remitting for reconsideration an arbitration award. The award arose from the sale of an accountancy practice. The dispute related to the price payable. The arbitrator made an interim award in September 2003 and a final award in 2007. The plaintiff argued that there was an obvious and fundamental error on the face of the final award in that it was argued that there was a patent mistake in the monetary calculation (being one of the grounds set out in *Keenan v Shield Insurance* as sufficient to invoke s.36 of the 1954 Act).

In dismissing the plaintiff's application the judge found that there was not a patent error because as a matter of law the arbitrator was not required to give reasons and therefore the request to remit the award to do so could not be granted. The judge also found that as the methodology for calculating the monetary sum was the subject of the interim award and having also confirmed that the interim award and the final award were two awards then the plaintiff could not challenge that distinct interim award as part of challenging the final award.

### **Jackson & Anor – v- Stokes; McCarthy J [2008] IEHC 276**

The plaintiff sought to recover an amount of approx €38,500 which it alleged was due in respect of interest arising from the delayed completion of the sale of a property. The sale closed on the 24<sup>th</sup> May 2007 rather than the date in the contract, the 2<sup>nd</sup> April 2007. The judge found that the agreed closing date was, in fact, the 16<sup>th</sup> April 2007. The contract contained the standard law society condition 40 which provides that if the sale has not completed by the agreed closing date then either seller or purchaser can give notice requiring completion to take place. This notice can only take effect if the serving party is able, ready & willing to complete or if not so able, ready and willing to complete then only by reason of the behaviour of the other party. Completion must take place within 28 days of the notice and time is of the essence in this regard.

The judge found that as the 28 day notice had been served prior to 16<sup>th</sup> April the notice was bad and of no relevance. He further held that the plaintiffs were not able, ready and willing to close on the 16<sup>th</sup> April nor on the 24<sup>th</sup> May because they could not provide appropriate release documentation in respect of four charges registered on title and that as there is no obligation to accept an undertaking in the place of strict legal rights the defendants failure to close was not due to any fault on the defendant's part and interest was not payable.

### **Córas Iompar Éireann and Iarnród Éireann (Applicants) and An Bord Pleanála (Respondent) and Sligo County Council (Notice Party) Clarke J; [2008] IEHC 295**

This was a judicial review of a decision by the Respondent relating to works completed at Ballymote Railway Station in Sligo. The Applicants had commenced development work which included the erection of several communication masts when the Notice Party sought to have the station building declared a protected structure under the provisions of the Planning and Development Act 2000 (the "2000 Act"). A dispute then arose as to the planning status of the relevant mast involving the interaction of provisions of the 2000 Act exempting development

relating to works carried out in connection with the proper running of railway lines and provisions of the same Act for the protection of protected structures.

The Notice Party applied under s.5 of the 2000 Act to the Respondent seeking a declaration as to whether or not the works were exempted development and the Respondent declared that the works were not exempted development. The Applicants sought a judicial review of this decision.

The judge found that, on the basis of the proper interpretation of the 2000 Act, s. 57 has the effect of de-exempting any development which would otherwise be exempted unless the development concerned meets the criteria for not materially affecting relevant features of the protected structure as set out in that section of the 2000 Act. In reaching this view, he expressly confirmed that while the established jurisprudence of the courts confers a very significant margin of deference to the planning judgments of the Respondent, a different situation applies where it is alleged that the Respondent has misconstrued any relevant statutory provisions. In such circumstances a decision of the Respondent is liable to be quashed by the court if the court is satisfied that, in some material respect, the decision of the Respondent was affected by an erroneous view of the relevant statute. However, he also held that as the development had lawfully commenced and had progressed to a significant extent during a time when it was exempted development it would be unjust to preclude its completion as a single integrated development because the station building had subsequently been declared to be a protected structure.

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