



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 86

Record Number: 2019/218

**Costello J.
Haughton J.
Collins J.**

BETWEEN/

WENDY DOYLE

**PLAINTIFF/
RESPONDENT**

- AND -

EUGENIE HOUSTON

**DEFENDANT/
APPELLANT**

JUDGMENT of Ms. Justice Costello delivered on the 7th day of April 2020

1. This is an appeal against the judgment and order of the High Court in special summons proceedings issued on 5 September 2017 seeking a declaration that sums secured by four judgment mortgages registered against the interest of the defendant (Ms. Houston), in Folio 25772F County Kildare, stand well charged on the property, and for an order for sale of the premises. On 27 March 2019, Allen J. declared that the sum of €58,888.89 for principal and interest from 14 July 2017 was well charged in respect of three judgment mortgages, and that the sum of €4,700 for principal and interest from 21 April 2017 was well charged in respect of a fourth judgment mortgage. He ordered that in default of payment of the sums due within three months, the lands and premises be sold. He awarded the plaintiff (Ms. Doyle) the costs of the application on the Circuit Court scale. Ms. Houston appealed the order to the Court of Appeal.

Background

2. Ms. Doyle is a solicitor and Ms. Houston is a barrister. Ms. Houston sued Ms. Doyle in High Court proceedings having Record Number 2014/3904P. Ms. Doyle was granted three orders for costs against Ms. Houston on 27 February 2015, 12 October 2015 and 14 February 2017. The latter was by consent. None of these orders have ever been appealed.
3. In June 2015, Ms. Houston sued Ms. Doyle and GD Gendist Fire & Safety Limited in the Dublin District Court, Record Number 3965/15. The proceedings were dismissed on the merits and Ms. Doyle was awarded her costs on the District Court scale. This amounted

to €4,700. The decision of the District Court was not appealed by Ms. Houston. I shall refer to these orders as "the costs orders" or "the High Court costs orders" as appropriate.

4. Ms. Houston is the owner of the property, the subject of these proceedings, comprised in Folio 25772F of the Register of County Kildare. It is her principal private dwelling.
5. Ms. Doyle swore judgment mortgage affidavits to register the costs orders in her favour as judgment mortgages against the interest of Ms. Houston in the premises. They were each in the form prescribed by Form 112 of the Property Registration Authority Rules. In each affidavit, Ms. Doyle avers that she was a creditor within the meaning of s.115 of the Land and Conveyancing Law Reform Act 2009, and gave the date from which she obtained judgment against Ms. Houston and identified the proceedings. She averred that "to the best of my knowledge and belief, the said Eugenie Houston at the time of swearing this Affidavit has an estate or interest in the lands contained in Folio 25772F of the Register County of Kildare".
6. Each of the affidavits were accepted by the Property Registration Authority ("the PRA") and four judgments mortgages in favour of Ms. Doyle have been registered on the folio at entries 4, 5, 6 and 7 of Part 3 of the folio. The judgment mortgage in respect of the order obtained in the District Court was registered on 15 June 2017, and the three judgment mortgages in respect of the High Court costs orders were registered on 9 August 2017.
7. Ms. Houston objected to the registration of the judgment mortgages and applied to the PRA to vacate them. The PRA declined to do so and indicated that this could only be effected on foot of a court order. No such order has been obtained by Ms. Houston to date. Ms. Doyle proceeded to have the High Court costs orders taxed. Ms. Houston objected to the jurisdiction of the Taxing Master and left the proceedings before they concluded. The Taxing Master proceeded to tax the costs in her absence. On 14 July 2017, the Taxing Master issued a certificate of taxation in the sum of €58,888.89. Ms. Houston did not appeal the taxation. The costs of the District Court order were on the District Court scale which came to €4,700 and were thus ascertainable without the need for further assessment.
8. Ms. Doyle called upon Ms. Houston to make proposals for the discharge of the sums due to her on foot of the costs orders. None were forthcoming.
9. In response to the actions of Ms. Doyle, on 20 July 2017 Ms. Houston issued a plenary summons against Ms. Doyle, bearing Record Number 2017/6661P, seeking the following reliefs:-
 - "1. *Ex Debito Justitiae, order(s) in favour of the plaintiff in the matter of Eugenie Houston v. Wendy Doyle, High Court Record Number 2014/3904P;*
 2. *Declaratory and other relief in respect of the taxation of costs in the matter of Eugenie Houston v. Wendy Doyle, High Court Record Number 2014/3904P;*

3. *Declaratory and other relief in the matter of Eugenie Houston v. GD Gendist and Wendy Doyle, District Court Record Number 3965/15;*
 4. *The plaintiff reserves the right to claim further relief;*
 5. *Any further or other order in favour of the plaintiff if this Honourable Court shall deem fit;*
 6. *Costs of and connected to the within proceedings."*
10. The proceedings were not served upon Ms. Doyle until 3 November 2017.
 11. Ms. Houston made it clear that she had no intention of discharging the sums due to Ms. Doyle on foot of the costs orders. Accordingly, Ms. Doyle issued the special summons commencing these proceedings on 5 September 2017. In her affidavit sworn to ground the application, on 5 September 2017, Ms. Doyle gave evidence as to the costs orders and she exhibited copies of the orders. She averred to the swearing of the judgment mortgage affidavits and she exhibited the four judgment mortgage affidavits. She averred to the registration of the four judgment mortgages on the folio and she exhibited the folio. She averred that, as of 5 September 2017, the sum of €4,700 together with interest on the sum of €35.28 was due in respect of the District Court costs order and the sum of €58,888.89 together with interest in the sum of €171.01 was due in respect of the High Court costs orders. In relation to the High Court costs orders, she averred that these costs were taxed by the Taxing Master and she exhibited his certificate of taxation. In relation to the District Court costs order, she avers that the costs were per the District Court scale of costs.
 12. There was an exchange of affidavits between the parties in relation to the substantive reliefs sought by Ms. Doyle. Ms. Doyle swore two affidavits dated 5 September 2017 and 29 November 2017, Ms. Houston swore two affidavits dated 9 and 21 November 2017 and Mr. Ronan Brennan, Ms. Doyle's solicitor, swore an affidavit on 22 November 2018 (sic). The matter was heard by Allen J. on 27 March 2019.

Ms. Houston's objections and defence in the High Court

13. Ms. Houston said that Ms. Doyle lacked standing to bring the proceedings as the orders were obtained by her acting as a solicitor and she was suing in a personal capacity. Ms. Houston said she was not entitled to bring the proceedings and it was a firm of solicitors whom she subsequently joined, or merged, her practice with (it was not clear which) who was entitled to the benefit of the costs orders. Accordingly, she was not entitled to maintain these proceedings as the sums claimed were not due to her.
14. Secondly, she said that her proceedings, Record No. 2017/6661P, were issued first and encompassed the issues in these proceedings. Therefore, there was no jurisdiction for the Master (and subsequently, the High Court) to deal with the special summons proceedings. As the Master had no jurisdiction, he could not properly transfer the proceedings to the High Court.

15. Thirdly, she argued that the certificate of taxation was invalid as the Taxing Master had not complied with the Rules of Court. In particular, he did not maintain a "book with a proper index" which she said was in breach of O.99, rr. 19 and 20 of the Rules of the Superior Courts.
16. Fourthly, the certificate of taxation was invalid as it was not stamped to show that stamp duty had been paid. This was a matter which went to the jurisdiction of the High Court to hear the proceedings.
17. Fifthly, she argued that Mr. Justice MacEochaidh had "cancelled" the three High Court costs orders, and she submitted that the District Court order was a nullity as there was no approved and signed judgment. She contested the validity of the order exhibited by Ms. Doyle on the basis that, while it was signed on 11 July 2017, it appears not to have been signed by Judge Waters, who dealt with the matter.
18. Ms. Houston issued a notice to cross-examine Ms. Doyle on her affidavits and she applied at the hearing of the application before the High Court to cross-examine both Ms. Doyle and Mr. Brennan, solicitor, who swore affidavits in reply to her own. In addition, she referred to competition law proceedings she had issued against the Bar Council. By reason of the existence of these proceedings, she objects to judicial benchers hearing her case. She says all judicial benchers are objectively biased arising from the unavoidable inherent conflict of interest between their position as judicial benchers, according to Ms. Houston, and the fact that the judicial benchers are bound to support the position of the Bar Council against her in the competition proceedings.

The decision of the High Court

19. With characteristic clarity and brevity, the trial judge dealt with the three jurisdictional objections raised by Ms. Houston as follows:-

"She argues first that the jurisdiction of the Court to deal with this special summons was effectively ousted by a plenary summons which she issued on 20 July 2017 in an action bearing Record Number 2017/6661P against the plaintiff in these proceedings. Those plenary proceedings are an attempt to amount (sic) a collateral attack on orders for costs previously made by the High Court and the District Court which were not appealed and which are final and conclusive, and I reject the argument that the Court does not have jurisdiction to deal with this summons on that ground.

The second objection to jurisdiction is that there is in this action no valid plaintiff. The demonstrable fact of the matter is that the orders for costs obtained by the plaintiff in these proceedings were obtained by her against the defendant in other proceedings in which Ms. Houston was plaintiff. The fact that Ms. Doyle was a member of a particular firm of solicitors at any time is irrelevant on the face of the orders. They are orders for costs in favour of Ms. Doyle.

The third objection to jurisdiction is that the certificate of taxation signed by the Taxing Master has not been stamped and it seems to me that that is not an issue that goes to jurisdiction, but rather is an argument that goes to the admissibility of the certificate of taxation and therefore to the validity of the registration of the judgment mortgage. So it is a substantive issue to be decided in the proceedings rather than an issue that goes to jurisdiction"

20. He refused to order cross-examination of either deponent as Ms. Houston had been unable to identify any issue in the proceedings in relation to which cross-examination of the witnesses would be necessary or appropriate.
21. He rejected the argument that the Taxing Master lacked jurisdiction by reason of an alleged failure to comply with O.99, rr. 18 and 19 of the Rules of the Superior Courts. He held that r.18 required that bills of costs for taxation be lodged with the Taxing Masters' office and with each bill a memorandum by the solicitor. Rule 19 required that a book with a proper index shall be kept in the Taxing Masters' Office in which, each day, the date of the lodgment of each bill of costs would be entered. The fact that the records were computerised did not amount to a breach of the rules. He held:-

"If the old fashioned paper books had been replaced by computerised records, this does not deprive the Taxing Master of jurisdiction to tax Bills of Costs."

22. He said that the issue whether the proceedings amounted to an abuse of process was not before him. It had already been canvassed before Ms. Justice O'Regan on 19 February 2019 and rejected. Her order was not appealed. Ms. Houston applied to the Court of Appeal for an extension of time within which to appeal against the order, but that application was refused so that matter was at an end. In any event, he was quite satisfied that the action before him did not constitute an abuse of process.
23. He rejected Ms. Houston's argument that the issues raised in these proceedings ought to be dealt with in her plenary action. He said that he understood Ms. Houston's argument to be that if the plenary action did not oust the jurisdiction of the High Court to deal with the special summons proceedings, then the special summons proceedings should be adjourned pending the outcome of the plenary proceedings. He rejected the argument on the basis that the plenary proceedings amounted to a collateral attack on the final orders of the High Court and the District Court, and that the High Court was entitled to and obliged to deal with the special summons proceedings.
24. He rejected Ms. Houston's argument that there was no proof that the stamp duty was paid on the certificate of taxation. He referred to the fact that the affidavit of Mr. Ronan Brennan, solicitor, who paid the stamp duty, was before the court. He held that it was not necessary that the payment of the stamp duty be vouched.
25. He rejected the argument that Mr. Justice MacEochaidh had cancelled the costs orders. He said:-

"It is absolutely clear from the approved note of the judgment that Mr. Justice MacEochaidh was dealing the costs of a directions application which he had just determined. As a matter of first principles, Mr. Justice MacEochaidh could not have cancelled previous High Court orders for costs."

26. He then went on to hold that the proofs in the case were in order, and he made the orders sought by Ms. Doyle.

Grounds of appeal

27. In her notice of appeal, Ms. Houston argued that the High Court had no jurisdiction to hear the case. She said that, by virtue of the provisions of s.3(2) of the Land and Conveyancing Law Reform Act 2013, the Circuit Court had exclusive jurisdiction to hear the well charging proceedings as they concerned her principal private dwelling which was valued at less than €3 million.
28. She said that the proceedings amounted to an abuse of process.
29. She argued that Ms. Doyle had no standing to bring the proceedings.
30. She said that the District Court order was not valid and that the PRA ought not to have registered the judgment mortgage affidavit on 15 June 2017.
31. She said that the certificate of taxation was not stamped and, therefore, may not be sued upon, and said the High Court was wrong to accept the evidence of a solicitor on affidavit as to the practice in relation to taxation of costs.
32. She argued that she had been denied her constitutional rights by all judges of the Superior Courts. She has raised a constitutional issue of judges being benchers of the King's Inns and that *"the conduct in which judicial benchers engage in is in conflict with their constitutional oath"*.
33. Her notice of appeal also raised issues which were outside the scope of the appeal, such as the order of O'Regan J., evidence adduced in other proceedings and the availability of the Digital Audio Recording of the proceedings in the High Court. She also objected to the absence of proofs which were neither necessary nor relevant to the issues in the case, such as Ms. Doyle's practising certificate or evidence of her professional indemnity insurance or run-off insurance. I do not propose to address these arguments as they are not part of the appeal.

Discussion

34. The first point which Ms. Houston made was that all of the judges comprised in the court were tainted necessarily by objective and by subjective bias by reason of the fact that they were judicial benchers. Although given an opportunity to do so, Ms. Houston did not articulate any basis whatsoever for asserting subjective or actual bias against any of the members of the court. Each of the members of the court made it clear to Ms. Houston that they did not have any bias against her and did not consider that there was any appropriate basis for any suggestion of bias. Ultimately, the only matter identified by Ms.

Houston was the fact that the members of the court are benchers of the King's Inns. The court did not accept that it was precluded from hearing the appeal by reason of that fact, or that it could call its objectivity into question in the eyes of a reasonable and well-informed observer and accordingly, proceeded to hear the appeal.

35. The first substantial point argued by Ms. Houston was that the plaintiff lacked standing to maintain the proceedings. This point is without merit. Ms. Houston sued Ms. Doyle in the High Court and in the District Court. Ms. Doyle was awarded costs against Ms. Houston. She is entitled to recover those costs from Ms. Houston. The fact that she is a solicitor is neither here nor there. There was no question of the costs being awarded to her firm. The orders speak for themselves and are in favour of Ms. Doyle. Ms. Doyle and Ms. Doyle, solicitor, are one and the same legal person. I agree with the decision of the High Court in this regard and would refuse this ground of appeal.
36. The second point Ms. Houston raised went to the jurisdiction of the High Court. She did not address the jurisdictional points previously raised in the High Court. She introduced an entirely new point based upon s.3 of the Land and Conveyancing Law Reform Act 2013. The circumstances where a party to an appeal would be permitted to raise an issue, or make an argument, not advanced in the High Court were considered by O'Donnell J. in the Supreme Court in *Lough Swilly Shellfish Growers Co-operative Society Limited v. Bradley* [2013] 1 I.R. 227. He held that what the Constitution required is an appeal which permits the Supreme Court, and by analogy the Court of Appeal, to consider whether the result in the High Court is correct. He then said:-

*"There is a spectrum of cases in which a new issue is sought to be argued on appeal. At one extreme lie cases such as those where argument of the point would necessarily involve new evidence, and with a consequent effect on the evidence already given (as in *KD (otherwise C) v. MC* [1985] IR 697 for example); or where a party seeks to make an argument which was actually abandoned in the High Court (as in *Movie News Limited v. Galway County Council* (Unreported, Supreme Court, 25 July, 1997)); or, for example where a party sought to make an argument which was diametrically opposed to that which had been advanced in the High Court and on the basis of which the High Court case had been argued, and perhaps evidence adduced. In such cases leave would not be granted to argue a new point of appeal. At the other end of the continuum lie cases where a new formulation of argument was made in relation to a point advanced in the High Court, or where new materials were submitted, or perhaps where a new legal argument was sought to be advanced which was closely related to arguments already made in the High Court, or a refinement of them, and which was not in any way dependent upon the evidence adduced. In such cases, while a court might impose terms as to costs, the Court nevertheless retains the power in appropriate cases to permit the argument to be made."*

37. Ms. Houston made no attempt to explain why the point she now wished to raise had not been raised in the High Court, nor why she ought to be permitted to raise it for the first time on appeal.
38. In my opinion, a considerable injustice may be dealt to a litigant who fairly meets the case presented by his or her opponent if they are then presented with a new argument which they had no opportunity to address at first instance. Nevertheless, I am prepared to accept that Ms. Houston may raise this argument, notwithstanding the prejudice to Ms. Doyle, as the point she raises goes to the very jurisdiction of the High Court. It thus would be unsatisfactory if this court were to determine the appeal without reference to this fundamental point.
39. The starting point is that, under the Constitution, the High Court has full and original jurisdiction in all matters of law and fact. Section 22(1) of the Courts (Supplemental Provisions) Act 1961 ("the Act of 1961") provides as follows:-
- "(1)(a) Subject to paragraphs (b) and (c) of this subsection, the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine any proceedings of the kind mentioned in column (2) of the Third Schedule to this Act at any reference number."*
40. Included in the Third Schedule at entry no. 19 is the following:-
- "Proceedings for any of the following purposes –*
- (a) the redemption of mortgages on land,*
 - (b) the raising of portions or other charges on land,*
 - (c) the sale and distribution of the proceeds of any land subject to any mortgage, lien or charge;*
 - (d) applications under sections 94, 97 (except where the property concerned is subject to a housing loan mortgage), 100 (except where the property concerned is subject to a housing loan mortgage) and 117 of the Land and Conveyancing Law Reform Act 2009."*
41. The limitation of the Circuit Court was originally fixed by reference to the rateable value of land and excluded proceedings where the rateable value of land exceeded IR£60. This has been increased from time to time. In cases coming within the jurisdiction of the Circuit Court, the judge of the circuit where the land, or any part of the land, is situate has jurisdiction.
42. By virtue of the provisions of s.45 of the Civil Liability and Courts Act 2004 the limit of the Circuit Court jurisdiction was changed. The reference to the rateable valuation of the land was replaced by the market value of the land, and the threshold was set at €3 million.

43. The Act of 1961 established the concurrent jurisdiction of the High Court and the Circuit Court in matters coming within the Third Schedule of the Act of 1961. The Act of 2004 did not alter this concurrent jurisdiction but rather redrew the scope of the jurisdiction of the Circuit Court.
44. The premises, the subject matter of these proceedings, are situated in Naas, County Kildare and have a market value of less than €3 million. Therefore, pursuant to s.22 of the Act of 1961, the Circuit Court has a concurrent jurisdiction with the High Court to hear and determine well charging proceedings in respect of them. Nothing in the Act of 2004 displaces the existing jurisdiction of the High Court.
45. Ms. Houston argues that the jurisdiction of the High Court is ousted by s.3 of the Act of 2013. It provides:-

"3(1) This section applies to land which is the principal private residence of—

(a) the mortgagor of the land concerned, or

(b) a person without whose consent a conveyance of that land would be void by reason of—

(i) the Family Home Protection Act 1976, or

(ii) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

and the mortgage concerned was created prior to 1 December 2009.

(2) Subject to subsection (4), proceedings brought by a mortgagee seeking an order for possession of land to which the mortgage relates and which land is land to which this section applies shall be brought in the Circuit Court.

(3) The jurisdiction of the Circuit Court to hear and determine proceedings referred to in subsection (2) where the land concerned is land to which this section applies shall be exercised by the judge of the circuit where the land or any part of it is situated."

46. In s.2(7) of the Act of 2013, "mortgage", in ss.2 and 3, means "a deed of mortgage and includes a charge".
47. Section 3 applies where three factual conditions are satisfied. First, it applies only to land which is the principal private residence of a party. Second, that party must be either (a) the mortgagor of the land concerned or, (b) a person coming within ss.(1)(b) of the section. Third, the mortgage concerned must have been created prior to 1 December 2009.
48. Ms. Houston submitted that the last condition did not apply to the all cases coming within the section but only to persons within subparagraph (b). She contended that the phrase "and the mortgage concerned was created prior to 1 December 2009" applied only to

subparagraph (b) and not to subparagraph (a). I cannot accept this construction. Firstly, the phrase “the mortgagor of land concerned” is followed by a comma and then the word “or”. In subparagraph (b) the person without whose consent a conveyance of that land would be void is identified by reference to two Statutes and then there is a comma. In subparagraph (b) there is no reference to a mortgage. It would make no sense, as a matter of language or logic, for the phrase “and the mortgage concerned was created prior to 1 December 2009” to be read solely by reference to a subparagraph which itself made no reference to a mortgage, especially where the preceding subparagraph (a) expressly refers to a mortgagor of land.

49. I am quite satisfied that the requirement that the mortgage concerned was created prior to the 1 December 2009 applies to the whole of subsection (1) and qualifies both subparagraphs (a) and (b).
50. This construction is reinforced by the provisions of subs. (2). The reference to “to which the mortgage relates” is a mortgage created prior to 1 December 2009, and the reference to “land to which this section applies” is to land which is the principal private residence of either the mortgagor within the meaning of subparagraph (a) or the person within the meaning of subparagraph (b).
51. It follows that s.3 of the Act of 2013 has no application in this case as the judgment mortgages, which are the subject of these proceedings, were created in 2017. Therefore, the concurrent jurisdiction of the High Court with the Circuit Court, established by the Act of 1961, has not, in this instance, been ousted or displaced by the Act of 2013. For these reasons, I would reject this ground of appeal.
52. The third issue to be addressed on the appeal was the fairness of the proceedings in the High Court. In my judgment, there was no want of fair procedures in the conduct of the proceedings before the High Court. Cross-examination of Ms. Doyle or Mr. Brennan was not necessary for a fair hearing and thus, the trial judge was clearly entitled to refuse to permit such cross-examination. As the trial judge said, Ms. Houston had not identified any conflict of fact which was required to be resolved or which otherwise made cross-examination of the witnesses either necessary or appropriate. There is, therefore, no basis for interfering with the trial judge’s determination on this issue.
53. Neither was it necessary to adjourn the proceedings commenced by a special summons to plenary hearing. In *Allied Irish Banks Plc v. McKenna and Another* [2013] IEHC 194 Laffoy J. said:-

“32. *The Court's jurisdiction under Order 38, rule 9 of the Rules gives the Court a discretion to adjourn proceedings commenced by special summons to plenary hearing. In Delany & McGrath [(Civil Procedure in the Superior Courts, 3rd edition)] at para. 27-20, it is stated that the test to be applied in deciding whether to adjourn the proceedings to plenary trial is whether issues of fact arise which can only be, or which can best be, resolved by a plenary hearing.*”

54. Applying this test to the facts in this case, the trial judge was correct in the exercise of his discretion to decline to adjourn the special summons proceedings to a plenary hearing.
55. The judgment mortgages, the subject of these proceedings, were registered by the PRA on the folio. Section 31 of the Registration of Title Act 1964 provides that:-

"31.(1) The register shall be conclusive evidence of the title of the owner to the land as appearing on the register and of any right, privilege, appurtenance or burden as appearing thereon; and such title shall not, in the absence of actual fraud, be in any way affected in consequence of such owner having notice of any deed, document, or matter relating to the land; but nothing in this Act shall interfere with the jurisdiction of any court of competent jurisdiction based on the ground of actual fraud or mistake, and the court may upon such ground make an order directing the register to be rectified in such manner and on such terms as it thinks just..."

56. It follows that unless and until the entries of the judgment mortgages are cancelled this court cannot look behind the folio. Ms. Houston said that she applied to the PRA to vacate the entries but was informed that she must obtain an order of court. That was in 2017. To date, she has not obtained such an order. It follows that neither the High Court, nor this court could, or may, engage with her argument regarding the validity of the costs orders, or the validity of the judgment mortgages, and the appropriateness of the registration of same on the folio. To do so would be to seek to go behind the register, which is not possible in the circumstances of this case.
57. Ms. Houston's case is, in truth, a collateral attack on the costs orders. But, she has raised no basis to question the validity of the costs orders. I reiterate that none of them have been appealed. They are therefore valid final orders binding on all courts. She has advanced no basis upon which it would be open to this court to set aside or vacate any of the costs orders.
58. In relation to the District Court order, Ms. Doyle was awarded the scale costs due to a successful defendant. Ms. Houston adduced no evidence to say that this figure was not €4,700 and the High Court was entitled to accept that this sum was due, pursuant to the order of the District Court of 21 April 2017. Ms. Houston's arguments regarding the process whereby the order of the District Court was produced are not relevant. The order was pronounced in open court and the amount of the costs is determined by the District Court scale. Ms. Houston is mistaken when she believes that "an approved and signed judgment" of the District Court is necessary in order for there to be a valid order. The order is valid once it is pronounced in open court. The judgment affidavit sworn by Ms. Doyle correctly avers to the fact that she is a creditor of Ms. Houston, on foot of an order of the District Court. Ms. Houston's challenge to the validity of the judgment mortgage, by reference to the alleged absence of a valid order for costs upon which Ms. Doyle was entitled to proceed, is without merit.
59. In my judgment, the Taxing Master had jurisdiction to engage in the taxation of the High Court costs orders for the reasons set out by the trial judge. While costs are now

governed by ss.168 and 169 of the Legal Services Regulation Act 2015 and by a new O.99, operative since 3 December 2019, the former Order 99 applied to the taxation in this case which occurred in 2017. There was no breach of O.99, r.19 by reason of the fact that the records are maintained electronically rather than in a physical ledger. Rule 20 concerns inspection of the book by interested parties and no issue arises on this rule in this case.

60. There is no requirement that a certificate of taxation be stamped to prove the payment of the duty due. Mr. Ronan Brennan swore in his affidavit of 22 November 2018 (sic):-

"[T]he stamp duty which the taxed costs attracted was paid by means of a fee card. I duly had a fee card stamped for €4,169 which I handed into the Taxing Master's Office. They were then able to release the Certificate of Taxation to me. The stamp duty is not impressed upon the Certificate of Taxation. A copy of the perfected Certificate of Taxation was exhibited at Exhibit "WD1" of the affidavit of Wendy Doyle sworn on 5th September 2007 (sic). As evident (sic) from the Certificate of Taxation at Exhibit "WD1", it was duly signed by the Taxing Master. Therefore, a valid Certificate of Taxation was duly issued and was exhibited in Ms. Doyle's aforementioned affidavit."

61. The High Court, as it was entitled to do, accepted this evidence that the duty was paid. It, therefore, had no reason not to receive the certificate as evidence of the sum due in respect of the High Court costs orders following taxation i.e. €58,888.89. It is also important to record that there has been no appeal of this order.
62. In sum, there is no merit in the grounds of appeal alleging a want of fair procedures in the High Court, or the wrongful admission of evidence. The trial judge was satisfied to admit the certificate of taxation as correctly stating the sum due on foot of the High Court costs orders and the affidavit evidence of Ms. Doyle as evidence of the sum due on foot of the District Court order. I see no error on his part in so acting, and I would dismiss these grounds of appeal also.
63. Ms. Houston sought orders in her notice of appeal which fall outside the scope of this appeal and, accordingly, I have not addressed them as I explained above.

Conclusion

64. The High Court had jurisdiction to hear and determine these special summons proceedings.
65. While the Circuit Court has a concurrent jurisdiction to deal with well charging matters, the High Court retains a discretion whether to remit the matter from the High Court to the appropriate Circuit Court. In this case, no application to remit the proceedings to the Circuit Court in Naas, County Kildare was made by Ms. Houston.
66. The judgment mortgages, the subject of these proceedings, were registered in 2017 against the interest of Ms. Houston in her principal private dwelling comprised in Folio 25772F of the Register of County Kildare. It was accepted that the value of the premises

was less than €3 million. Section 3 of the Land and Conveyancing Law Reform Act 2013 did not apply in the circumstances of this case as the mortgages were created after 1 December 2009 and the section, therefore, had no application. Thus, the jurisdiction of the High Court was not affected by section 3.

67. Section 31 of the Registration of Title Act 1964 provides that the folio is conclusive as to title and the registrable interests in the land. The judgment mortgages, the subject of these proceedings, were duly registered on the folio. Ms. Houston cannot go behind the folio by challenging either the judgment mortgages or the underlying orders of the High Court and the District Court.
68. The Taxing Master had jurisdiction to tax the costs awarded by the High Court in favour of Ms. Doyle. There was no evidence of a failure to comply with the requirements of O.99, r.19 of the Rules of the Superior Courts.
69. The High Court had evidence that the duty payable in respect of a certificate of taxation had been paid and that the certificate of taxation was duly signed by the Taxing Master. This evidence was admissible and acceptable by the High Court. The costs awarded to Ms. Doyle by the District Court were on the District Court scale, and there was no dispute as to the proper amount of such costs.
70. For these reasons, I would agree with the trial judge that Ms. Doyle has proved her case and I would dismiss the appeal and affirm the order of the High Court.

I agree.: Haughton J.

I agree.: Collins J.