

UNAPPROVED
THE SUPREME COURT

Murray C.J. 110/06
Kearns P.
Denham J.
Geoghegan J.
Fennelly J.

Between

LIAM IRWIN

Applicant / Appellant

-v-

THOMAS DEASY

AND BY ORDER:

CARMEL DEASY

RESPONDENTS

Reasons for the ruling of the Court delivered by Murray C.J. on the 14th day of May, 2010

This is an application by the appellant, the Collector-General of the Revenue Commissioners, to have an appeal heard by this Court notwithstanding that the subject of the appeal has ceased to be a live issue between the parties. The appellant contends that he has a real and material interest in the outcome of this appeal and that the issue is not moot in the generally-accepted sense.

The appeal arises from a judgment of the High Court (Laffoy J.) of 31st January 2006 in “well charging” proceedings brought by the appellant against the first named defendant. The second named defendant was joined to the proceedings by Order of the High Court (Finlay Geoghegan J.) of 1st March 2004. The first and second named defendants in the proceedings are an estranged married couple, co-owners of registered property in respect of which the Revenue Commissioners had three judgment mortgages registered against the interest of the first named defendant. In the High Court proceedings, the second named defendant raised the core issue of whether the Court had the jurisdiction to give a judgment creditor a remedy for enforcement of his judgment mortgage that affects not only the judgment debtor but also a person who co-owns the property against which the judgment mortgage is registered.

In her judgment, Laffoy J. held that, where a judgment mortgage is registered against the interest of one of the owners of co-owned registered land, the only effective remedy for enforcement of the judgment mortgage would be either to order partition of the land between the judgment debtor and the co-owner or a sale in lieu of partition followed by a division of the proceeds of sale. However, the learned High Court Judge held that either option would interfere with the property rights of the co-owner and that in the absence of specific jurisdiction it would not be appropriate to make such an order.

Laffoy J. held that the interest of a judgment creditor of registered land who has judgment mortgages registered against one co-owner of the jointly owned land is insufficient to give him *locus standi* to maintain a suit for partition of the land. The learned High Court Judge further held that, as regards registered land, the High Court prior to the enactment of the Registration of Title Act 1964 had no inherent jurisdiction in common law or equity to make an order for sale in lieu of partition of the entirety of co-owned property to enforce a judgment mortgage, or for any other purpose, and that the power to order a sale in lieu of partition is wholly statutory and does not extend to registered land in the absence of any express jurisdiction conferred by the Act of 1964.

This has implications of fundamental importance to a State authority, the Revenue Commissioners, in the exercise of the appellant’s statutory power to collect taxes. However, given that the appellant and the first named defendant have, since the filing of the appeal, reached a settlement satisfying the three judgment mortgages which were the subject of the proceedings in the High Court, these points of law have ceased to be a live issue between the parties.

The question is therefore raised as to whether this appeal should be allowed to proceed, having regard to the doctrine of mootness.

Hardiman J.'s definition of the doctrine in *G. v. Collins* [2005] 1 I.L.R.M. 1, cited in *O'Brien v. The Personal Injuries Assessment Board* (Supreme Court, unreported, 16th November 2006), is a useful starting point: "*proceedings may be said to be moot where there is no longer any legal dispute between the parties*". The mootness doctrine is applied by the courts to restrain parties from seeking advisory opinions on abstract, hypothetical or academic questions of the law by requiring the existence of a live controversy between the parties to the case in order for the issue to be justiciable.

The rationale underlying such an approach, as set out by the Supreme Court of Canada in *Borowski –v- Canada* (1989) 1 S.C.R. 342, was cited with approval in *G. v. Collins* and *O'Brien*:

"An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the Court is called upon to reach a decision. The general policy is enforced in moot cases unless the Court exercises its discretion to depart from it."

The general practice of this Court is to decline, in principle, to decide moot cases. In exceptional circumstances where one or both parties has a material interest in a decision on a point of law of exceptional public importance, the Court may in the interests of the due and proper administration of justice determine such a question.

However, the discretion to hear an appeal where there is no longer a live controversy between the parties should be exercised with caution, and academic or hypothetical appeals should not be heard. Exceptions may only arise where there is a question of exceptional public importance at issue and there are special reasons in the public interest for hearing the appeal.

In *O'Brien v. Personal Injuries Assessments Board* it was noted:

"Where, as in this case, a party has a bona fide interest in appealing against a declaratory order of the High Court which is not confined to past events peculiar to the particular case which have been resolved in one way or another the Court should be reluctant to deprive it of its constitutional right to appeal. In this case the respondent continues to be constrained in the exercise of public powers under statute by virtue of the Declaration granted in the High Court at the instance of the applicant."

In the present application before the Court, despite the fact that the question is no longer a live issue between the parties themselves, it remains a live issue in the context of the continued exercise by the Revenue Commissioners of their statutory powers to seek to recover outstanding taxes, and the appellant therefore has a real, and not merely hypothetical, interest in the determination of this appeal.

The appellant indicates in his submissions that the Revenue Commissioners have under their care and management an estimated minimum of 20 similar cases in which this issue arises, and also states his understanding from Counsel dealing with other cases that a number of actions which raise the same issue have either come before the High Court but have not yet been determined, or have been deferred pending the outcome of the present appeal before this Court.

It must also be noted that the issues raised in this appeal have also important implications for the property rights of co-owners of registered land in a similar position to the second named defendant in these proceedings, whose cases are pending before the courts.

It is finally noted that Counsel for the second named defendant is willing to adopt the role of *legitimus contradictor* for the appeal, if granted.

It is for these considerations, and having regard to the exceptional circumstances and nature of the case, the Court decided that the appeal may proceed and will be listed for hearing next term.