

Irish High Court decision: a Master has no jurisdiction to strike out a Special Summons

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Mr. Justice Garrett Simons delivered Judgment on 28 January, 2019 in *Permanent TSB (Formerly Irish Life and Permanent Plc) -v- Carr [2019] IEHC 14*.

Permanent TSB ("the Bank") made an application to discharge an Order of the Master of the High Court ("the Master") seeking to dismiss the Special Summons.

Background

The Bank's proceedings are for an order for possession of lands and premises in Nenagh, County Tipperary. The application for the Order for possession is grounded on a "Mortgage and Charge" between the Bank and the Defendant, Mr Carr.

The Bank issued the Special Summons on 27 November, 2017. An application was made by the Bank to amend the Special Summons. The original Special Summons referred to a map which delineated the lands in question. It appears that there is no such map and the Bank was therefore seeking to amend the Special Summons to identify in greater detail the lands in question.

The High Court made an Order on 25 June, 2018 allowing the Bank to amend the Special Summons.

On 5 October, 2018, when the matter was next in the Master's List, the Master noted that a map was not attached to the version of the Mortgage and Charge exhibited in the proceedings.

He said that the Bank would need to apply for an Order for rectification in respect of the mortgage. The Master purported to strike out the Special Summons.

Application to discharge an Order of the Master

Judge Garrett Simons ("the Judge") allowed the bank's application to discharge the Order of the Master striking out the Special Summons. He stated that the Master has no jurisdiction to strike out a Special Summons

The Judge explained that the absence of a map may ultimately be something that will defeat the Bank's proceedings at the hearing of the action in that the mortgage could be deficient but that such a determination is not within the jurisdiction of the Master.

In his concluding paragraphs, he outlined that when the matter returned to the Master's List, the Master should have transferred it to the Chancery Special Summons List for hearing by a High Court Judge. Instead, the Master exceeded his jurisdiction in (i) purporting to adjudicate on the enforceability of the mortgage, and (ii) purporting to strike out the Special Summons.

He directed that the Master's Order be discharged and reinstated the Special Summons. He made further Orders directing that the proceedings be transferred to the Chancery List where a date for hearing can be fixed where he will also direct that the Bank file legal submissions in advance of such hearing saying why it can rely on the mortgage notwithstanding the absence of a map.

For further information on this decision, please contact Stephen O'Connor at Stephen.OConnor@ogier.com

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Meet the Author



Stephen O'Connor

Partner

Ireland

E: stephen.oconnor@ogier.com

T: [+353 1 232 1074](tel:+35312321074)

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