

Neutral Citation No: [2007] NIQB 94

Ref: **MORF5994**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **23/11/07**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF
FERMANAGH AND TYRONE**

BETWEEN:

EUGENE OWENS

PLAINTIFF/APPELLANT;

-AND-

TRUSTEES OF SIXMILECROSS DEVELOPMENT ASSOCIATION

-AND-

SIXMILECROSS ENTERPRISE LTD

DEFENDANTS/RESPONDENTS.

MORGAN J

[1] The plaintiff is the owner of land and premises (the premises) at Sixmilecross, County Tyrone consisting of a dwelling house, yard and buildings. The defendants are the Trustees of the Sixmilecross Development Association (the Association) to the rights and liabilities of which Sixmilecross Enterprise Ltd has succeeded. The Association has promoted various cross community initiatives on behalf of the local community. In 1997 it obtained a mobile building of approximately 2000 ft.² and entered into a lease with the plaintiff to place the building in the premises. The building was then used for the cross community activities including a Parent and Toddler Group and the Women's Committee. The lease was initially for a period of three years commencing on 1 January 1997. The first year was rent-free and thereafter the parties agreed a rent of £50 per week. No further agreement was entered into and from 1 January 2000 so there arose a tenancy from year to year by implication subject to the terms of the original lease.

[2] The Rector of the local church, Mr Johnston, arrived in Sixmilecross in 2000. In 2001 he was appointed chairman of the Association. At that time the plaintiff and his wife were leading members of the Association and I have every reason to believe that they both contributed much to the local community. Mr Johnston was concerned that the administration of the Association was unsatisfactory and set about putting its affairs into a more businesslike state. In particular he was concerned about the rent payable to the plaintiff for the land on which the building was situated for which the Association paid £2600 per annum. He sought advice from the District Valuer and was informed that an appropriate rent was £1500 per annum. He approached the plaintiff seeking to negotiate a rent reduction but the plaintiff refused and his solicitors pressed for payment of outstanding rent. On 25 March 2002 Mr Johnston wrote to the plaintiff inviting him to resign from the Association because of his conflict of interest in respect of the rent payable. The plaintiff then left the Association and it is clear that he believes that Mr Johnston treated him badly and he feels that in particular Mr Johnston failed to take into account the plaintiff's past work on behalf of the community.

[3] In late 2002 the plaintiff's solicitors indicated an intention to issue proceedings for outstanding rent for the years 2001 and 2002. The Association wrote to the plaintiff on 14 November 2002 to say that they could not afford the rent and would have no alternative but to remove their building and wind up community operations on the site. The Association advised the community groups on 29 November 2002 that they would be required to vacate the mobile by 12 December 2002. One of these groups was the Parent and Toddler Group of which the plaintiff's wife was a leading member having been chair on a number of occasions. That group sought an extension to enable them to proceed with their Christmas plans. On 12 December 2002 the Association wrote to the plaintiff indicating that they intended to pay the outstanding rent claimed but needed to make arrangements to remove the mobile building to prevent any further claims for rent arising. They invited the plaintiff to allow a rent-free period for the month of January 2003 in order to permit the Parent and Toddler Group to enjoy their Christmas activities. He agreed. I am satisfied that the body of correspondence at this time constituted written notice of the defendant's intention to determine the lease in accordance with its terms.

[4] In January 2003 matters deteriorated. On 8 January solicitors for the Association indicated to the plaintiff's solicitors that they would require access to the site on 25 January to remove the mobile building. The plaintiff established in cross-examination that no preparation for the removal was ever carried out by the Association although Mr Johnston contended that it would have been achieved with voluntary help. On 16 January 2003 Mr Johnston attended at the premises to give access to NIE to remove the meter. This was disputed by the plaintiff but having seen and heard the witnesses I prefer Mr

Johnston's account. Clearly Mr Johnston expected some trouble as he was carrying a concealed recording device. The plaintiff ordered him off the premises and pushed him. On 21 January the Parent and Toddler Group instructed solicitors to write to the Association indicating their firm intention to continue to use the building and remain on the site and asserting that the landowner had no problem with the group remaining in the building at the site. I am satisfied that the plaintiff was well aware of this correspondence and approved it and the intention was to indicate that the mobile would be retained on the site. By this time the plaintiff and his wife were deeply involved in a confrontation with Mr Johnston whom they felt was acting contrary to the interests of the community. In response on 24 January the Association sought an assurance from the plaintiff's solicitors that it would not be hindered in accessing the site for the mobile. On 31 January the solicitors on behalf of the Parents and Toddlers Group wrote to the Association stating that they would not be moving from the premises. On 7 February 2003 the plaintiff's solicitors offered access on reasonable notice but pointed out that this was a private yard and the solicitors made various associated suggestions and demands.

[5] I conclude that the actions of the plaintiff on 16 January 2003 and the correspondence from his wife's Parent and Toddler Group which was approved by him was intended to and did convey to the Association that it would not be permitted to remove the mobile building before the end of January 2003. I am further satisfied that in accordance with the notice referred to earlier the relationship of landlord and tenant ceased on 31 January 2003. In those circumstances the plaintiff's claim for rent thereafter must fail.

[6] The plaintiff also makes his case in trespass. To leave one's property on the land of another without his consent is at law a trespass entitling the land owner to damages. I have found, however, that in this case the plaintiff actively sought to prevent the Association removing the mobile building during the currency of the lease up to 31 January 2003. This is not, therefore, a case where property has been placed on the land of another but a case where the plaintiff has prevented a party removing his property and then claimed damages for the retention of the property. It is notable that even in the correspondence of 7 February 2003, after the determination of the lease, the plaintiff's solicitors were still seeking to enable the Parent and Toddler Group to remain in the building on the site and the evidence indicates that this proposal was not abandoned by the plaintiff and his wife until sometime later in February 2003.

[7] Once the plaintiff, as I have found, exercised dominion over the mobile building by retaining it on his site until after the expiration of the lease he was guilty of conversion of the building. Thereafter the plaintiff refused to allow

access to the site and the building until his misconceived claim for rent was satisfied. Accordingly his claim in trespass must also in my view fail.

[8] These are the only matters which arise on the pleadings and accordingly I dismiss the appeal. I would only add that I am entirely satisfied that all of the parties in this case have given substantial service to their local community and it is a great pity that this dispute could not have been resolved by agreement within that community.