

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2019 No. 137 JR]**

**BETWEEN**

**GARRY GAVIGAN, FLANAGAN'S NURSING HOME LIMITED,  
STANFORD WOODS CARE CENTRE LIMITED,  
THE BRINDLEY MANOR FEDERATION OF NURSING HOMES LIMITED, RYEVALE  
NURSING HOME (KILDARE) LIMITED,  
LARCHFIELD NURSING HOMES LIMITED,  
PASSAGE HEALTHCARE INTERNATIONAL (IRELAND) LIMITED,  
TLC NURSING HOME LIMITED AND TLC HEALTH SERVICES LIMITED**

**APPLICANTS**

**AND**

**VALUATION TRIBUNAL**

**RESPONDENT**

**JUDGMENT of Mr. Justice Meenan delivered on the 10th day of September, 2020**

**Introduction**

1. This is an application brought by the Commissioner of Valuation ("the Commissioner") to be joined as a notice party (or respondent) to these judicial review proceedings. The application was opposed by the above named applicants, and the respondent does not propose to take any part in these proceedings.

**Background**

2. The applicants are the owners of various nursing homes in which many persons who are elderly reside. Many of these residents suffer from serious physical, or other, illnesses which make independent living no longer possible.
3. The Commissioner is appointed under s. 9 of the Valuation Act 2001 (as amended) ("the Act of 2001"). Under s. 13 of the said Act the Commissioner is directed to provide for the determination of the value of all relevant properties in accordance with the provisions of the Act of 2001. On 7 September 2017, the Commissioner, in discharge of his statutory functions, issued a valuation certificate in respect of each of the applicants' nursing homes.
4. On 5 October 2017, each of the applicants appealed the decision of the Commissioner to include each of the nursing homes in the valuation list. The grounds of appeal included that nursing homes are "*not relevant property*" and, thus, are exempt from valuation and the requirement to pay rates. The applicants further claimed that all occupiers, being residents in the various nursing homes, ought to have been served with the relevant papers. In effect, the applicants were submitting that when valuing nursing homes, the respondent must serve all of the papers on each and every resident before proceeding with an appeal.
5. Though resisted by the applicants, the respondent directed that the submission of the applicants' that each resident in the various nursing homes were required to be served should be dealt with by way of a preliminary issue.

6. At the hearing of the preliminary issue before the respondent, the Commissioner fully participated and cross-examined the applicants' witnesses and made detailed submissions in opposing the applicants.
7. In its decision, the respondent decided the preliminary issue against the applicants and determined that in each of the applicants' appeals that there was no obligation on it to serve, by reference to s. 36 of the Act of 2001, a copy of the relevant documents on the residents in each of the nursing homes involved, or on any other persons identified by the applicants.

#### **Judicial review proceedings**

8. The applicants brought an application by way of judicial review seeking certain reliefs against the respondent. Amongst the reliefs sought by the applicants was a declaration that in reaching its said decision the respondent had erred and misdirected itself in law. Further, the applicants sought an order of *certiorari* quashing the said decision of the respondent.
9. Leave was granted to the applicants by an Order this Court made on 11 March 2019 (Noonan J.). Subsequently, the respondent elected not to participate in the judicial review proceedings.

#### **Application before the Court**

10. As the respondent will not be participating in these judicial review proceedings, the Commissioner has sought to be joined as a notice party (or respondent). This application was resisted by the applicants.
11. Mr. Ciaran Craven SC, on behalf of the applicants, submitted that the stance adopted by the respondent of declining to stand over its own decisions as its own *legitimus contradictor* does not automatically lead to the Commissioner being entitled to be joined in the proceedings. He further submitted that the Commissioner had not established that he was "*directly affected*", as required by O. 84, r. 22 of the Rules of the Superior Courts (RSC).
12. As to the meaning to be given to the words "*directly affected*", Mr. Craven relied upon the following passage from the Court of Appeal's decision in *North Meath Wind Farm Limited & Anor. v. An Bord Pleanála* [2018] IECA 49, where Peart J. stated: -

"The notice party [Spin Communications T/A Storm Fm v. IRTC [2000] IESC 56] was clearly directly affected as it stood to lose a licence actually granted to him. That is very different to the present case where the [proposed notice parties] stand to lose nothing *directly* from any decision the Court might make. I emphasise the word '*directly*'. If the judicial review challenge by the developer is unsuccessful, clearly they are not directly affected in any adverse sense. If the challenge is successful, again there is no direct affect upon them in the sense of losing any right they had before the challenge was brought. At worst the matter would be remitted to the Board for fresh consideration of the application. ..."

Relying on this passage, Mr. Craven submitted that the Commissioner had nothing to lose "*directly*" were the applicants to be successful.

13. On behalf of the Commissioner, Mr. David Dodd BL stated that in all judicial review proceedings involving a decision of the respondent, that he was aware of, the Commissioner had either been named as a notice party or a respondent. This, it was submitted, merely evidences that the Commissioner is "*directly affected*" by the decisions of the respondent and, thus, had a "*vital interest*" in the outcome of the judicial review proceedings. In support of this Mr. Dodd relied upon a number of authorities, in particular, the following passage from Kearns J. in *BUPA Ireland Limited v. Health Insurance Authority* [2006] 1 I.R. 201, where he held: -

"...a party has a 'vital interest in the outcome of the matter' or is 'vitaly interested in the outcome of the proceedings' or would be 'very clearly affected by the result' of the proceedings, it is appropriate for that party to be a notice party in the proceedings."

14. The Commissioner further submitted that, in the event of this application not being acceded to, there would be no "*legitimus contradictor*" to the applicants' application for judicial review. Thus, the reliefs sought by the applicants would be granted by default. This would be, according to Mr. Dodd, very unsatisfactory and he relied upon the following passage in the judgment of Humphreys J. in *Hall v. Stepstone Mortgage Funding Limited* [2015] IEHC 737: -

"...some entity should normally be a *legitimus contradictor*, and in a case where the action relates to a challenge to a judicial proceeding, that entity is the other party to the underlying proceeding. ..."

#### **Consideration of issues**

15. The first matter which I have to decide is whether the Commissioner is "*directly affected*" by these judicial review proceedings. Given the role and function of the Commissioner under the Act of 2001, I am satisfied that the Commissioner would clearly be affected by the result of these judicial review proceedings. This is all too clear when one looks at the consequences were the decision of the respondent to be quashed. In order for the Commissioner to exercise his statutory duties, it would require, in this case, the relevant documentation to be served on each person residing in the applicants' nursing homes. The Court was informed that there are some 437 private nursing homes in the country in which in excess of 20,000 people reside. It is the case that many of those residing in nursing homes have health issues which make independent living or care in the home no longer possible. A requirement that all are to be put on notice of an application by the Commissioner, under s. 36 of the Act of 2001, would clearly have a very significant impact on the Commissioner in carrying out his statutory duty relating to valuation or revaluation exercises that may involve nursing homes.

16. As I am satisfied that the Commissioner has established that he is directly affected by the outcome of these judicial review proceedings, and ought to be joined as a notice party, it follows that there is now a *legitimus contradictor* to the application herein.

**Conclusion**

17. By reason of the foregoing, I will accede to the application of the Commissioner and direct that he be joined as a notice party. As this judgment is being delivered electronically, the parties have fourteen days in which to make submissions on costs.