



LITIGATION AND DISPUTE RESOLUTION

Dunnes Stores loses on appeal in a dispute involving a Galway Shopping Centre

by **Emer Wilkie**

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Amy Bradley and Emer Wilkie explain why a ‘deceptively simple’ dispute between a commercial landlord and tenant appeared before the Court of Appeal.

What seemed like a relatively straightforward dispute resulted in an award of aggravated damages against Dunnes Stores and a finding that they are not entitled to keep the doors of their shop in a Galway Shopping Centre shut.

The issues that came under consideration in the case included the rights and obligations of Dunnes Stores as a tenant in the shopping centre and the particulars of the planning permission for the shopping centre.

Camiveo Limited v Dunnes Stores

On 9 May 2019, the Court of Appeal dismissed an appeal by Dunnes Stores against a High Court judgment of Mr Justice Barrett in which he ordered that Dunnes is restrained from disabling the automatic opening mechanism of the doors from its unit in Edward Square Shopping Centre onto Williams Street in Galway City during the shop’s opening hours.

Background

In May 2013, Camiveo Limited (the landlord) acquired the shopping centre including the landlord interest in leases with Dunnes, a tenant in the shopping centre.

The landlord brought summary judgment proceedings against Dunnes in September 2013 seeking judgment in respect of rent and service charges due to it. The landlord secured an award, in July 2014, of €1,134,392.32 against Dunnes in the High Court. Dunnes appealed this judgment to the Supreme Court but was unsuccessful on appeal.

In or around May 2015, €384,392.32 plus interest due under the summary judgment remained unpaid by Dunnes, and it seems that there were further rent arrears.

On 16 June 2015, the landlord’s solicitors served copies of the Orders of the High and Supreme Courts with penal endorsements on Dunnes Stores’ registered office just after noon. At 1pm a direction was issued by email by an executive at Dunnes who ordered the closure of the doors “ASAP”.

Following the closure of the doors, Galway City Council, in its role as a planning authority, issued a warning letter under the Planning and Development Act 2000 (as amended) to Dunnes, on the basis that the closure of the doors constituted a breach of the planning permission pursuant to which the shopping centre was constructed. Similarly, the Chief Fire Officer of Galway County Council wrote to Dunnes around July 2015 recommending “the presence sensing devices to the main entrance/exit doors from Dunnes Stores directly to open air to be reactivated.”

The High Court

The landlord sought relief in the High Court.

Amongst other things, the landlord pleaded that Dunnes was in breach of its obligations as tenant and that the closure of the entrance doors caused loss to the landlord, difficulties with other tenants in the shopping centre and that it gave rise to issues with the insurance. The landlord sought an order requiring Dunnes to keep the entrance doors open and an order for damages, including aggravated and exemplary damages for breach of contract and for unlawful interference with economic interests.

Numerous lease covenants were considered by the Courts including the covenant to pay rent, service charges and interest, the covenant not to obstruct common areas, to open for trade to the general public, to comply with statutory requirements (including with the Planning Acts, Public Health Acts and Building Control Acts), to comply with fire and safety precautions and not to do anything to cause the landlord's insurance policy to become void.

On 9 September 2015, the High Court granted an interlocutory order restraining Dunnes from disabling the automatic opening mechanism of the doors from its unit in the Shopping Centre onto Williams Street.

Ultimately, in 2017, the High Court ordered that Dunnes keep its doors open while the shop was open. The High Court also awarded the landlord damages, including aggravated damages.

Court of Appeal

The High Court judgment was appealed by Dunnes to the Court of Appeal. Ms Justice Costello delivered her judgment on 9 May 2019.

In summary, on appeal Ms Justice Costello agreed with the High Court judgment that the closure of the doors amounted to a breach by Dunnes of its obligations and noted that Dunnes had "no intention of re-opening the doors in the absence of a court order."

Ms Justice Costello also noted that an indefinite closure of the doors constituted a breach of the planning permission. She held that the landlord was entitled to an injunction to restrain Dunnes from closing the doors while the premises was open for trade.

Whilst Ms Justice Costello allowed Dunnes' appeal in respect of certain aspects of the awards for damages, following her review of the emails exchanged between Dunnes' personnel, the Judge held that the landlord should be compensated for the wrongs inflicted by Dunnes and she found that the aggravated damages award of €45,000 was not excessive in the circumstances, noting the behaviour of Dunnes. While Dunnes contended subsequently that the doors were closed for "operational reasons", the Court found that this was directly contradicted by the emails. In particular, Ms Justice Costello remarks that "the rights of the [landlord] were deliberately flouted by Dunnes without regard to its obligations under the Lease or indeed to other occupants of the Edward Square shopping centre."

The appeal was dismissed, except for the reduction in the award of damages.

The Judgments and in particular the willingness of the Court to award aggravated damages against Dunnes, should serve as a warning to tenants who are in breach of their leasehold obligations.

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