Dublin City Council
Comhairle Cathrach Bhaile Átha Cliath

Court ATTENDANCE OF Edward Molloy ON 10th December 2012

Case No.: 82570
Name: Finbarr Whelan
Locus: 5 Woodleigh Oak, Highfield Rd, Rathgar, Dublin 6

Court Attendance
Finbarr Whelan V. Dublin City Council.
Court 23, Judge Walsh

The claimant Mr. Finbar Whelan outlined to the Court that he was looking to challenge the interest being applied for the NPPR charge. The judge noted that this was a statutory charge and Section 5 was a self declaration.

Finbarr Whelan outlined that he can't be expected to pay for a charge he was not aware of. The Local Authority should have notified him earlier and should not be able to apply the interest.

The judge set out that he has an obligation to be compliant with the taxes and charges being applied to his property. The judge also asked if I would speak with Mr. Whelan outside the Court and explain the legislation to him.

I spoke with Mr. Whelan and Paddy Crosby from the Motor Tax Office (NPPR Department) and explained the legislation to Mr. Whelan. We also went through the mechanism which was under Section 11, which is the sharing of information and the purpose of this section was to allow the Local Authority to recover monies and not in fact use the information to notify those liable for the charge.

Mr. Whelan was not accepting the information we provided to him. He alleged there was an underlying obligation for the Local Authority to inform him of the charge. I again re-informed Mr. Whelan that the Court would be obliged to interpret the law as set out under the Act, Local Government (Charges) Act 2009.

Mr. Whelan began to get irritated with my interpretation of the Act so it was decided that we would allow the Court to deal with the issues.

The matter went to hearing and I informed the Court in relation to the jurisdiction aspect of the Europeans Small Claims Court under Article 2 of the EU Regulations 861/2007, this covers the scope of the European Small Claims Court. This provides that it shall not extend to revenue, customs or administrative matters. The judge allowed the claimant to make his case irrespective of the reference to the European Regulations. Mr. Whelan outlined to the Court that he lived in the UK since 1987. He also said that he had been compliant with his taxes and that the charge itself was not a charge by the Revenue so he was unaware of the tax that had already been charged to the property. He further noted that is Section 11 of the 2009 Act that the Local Authority had the avenue of collecting the information through a shared body such as the Private Residential Tenancy Board, ESB etc. He further went on to say that under Section 9 which relates to the collection of the charge provides that the Local Authority should collect the charge applied and should deal with associated matters. Mr. Whelan outlined to the

Court that he believed that the associated matters meant that the Local Authority should notify the individuals and that he in fact only received notification that he was liable for the charge in November 2011 some 3 years after the charge was applied and as a result of this he had substantial interest late payment fees which amounted to the sum of €1,580.00.

I opened Section 5, 6, and 11 Local Government (Charges) Act 2009. Outlining the statutory requirement that property owners would self declare and furthermore in Section 6, late payments were to be applied of €20.00 a month. I also went on to say that the shared information under s.11 was a mechanism to be used for the recovery of the charge. This could be used to pursue those who were non-compliant and it was never intended to be used a mechanism to notify people of their responsibility to self- declare under s.5.

The judge was satisfied with DCC's submission on the legislation. The Court held Mr. Whelan was liable and went on to say that there was no requirement on DCC to put Mr. Whelan on notice under Local Government (Charges) Act 2009. Furthermore, he rejected Mr. Whelan's argument that DCC should have pursued him before the 3 years. The judge dismissed Mr. Whelan claim.

Edward Molloy
Solicitor