

# THE SUPREME COURT

No. 74/07

*Fennelly J.*

*Finnegan J.*

*O'Donnell J.*

IN THE MATTER OF KENTFORD SECURITIES LIMITED (UNDER  
INVESTIGATION) AND

AND IN THE MATTER OF THE COMPANIES ACT, 1963-2001 AND

IN THE MATTER OF AN APPLICATION BY THE DIRECTOR OF

CORPORATE ENFORCEMENT PURSUANT TO S.160(2) OF THE

COMPANIES ACT, 1990

Between:

THE DIRECTOR OF CORPORATE ENFORCEMENT

Applicant

-and-

PATRICK MCCANN

Respondent

Ex tempore judgment of the Court delivered on the 1<sup>st</sup> day of February, 2011 by

Fennelly J.

Following the judgment of this court delivered by Mr. Justice O'Donnell, the court is now called upon to decide on the question of the Disqualification Order which should be made in accordance with Section 160 of the Companies Act, 1990.

It is important to emphasise from the outset that this is a decision relating to the facts of this particular case. There have been cautions in some of the cases about

the undesirability of building up a body of case law which can be cited as precedent in a more general way. It is necessary to emphasise that matter at the outset.

The facts of the entire matter are extremely fully set out in the judgment of Mr. Justice O'Donnell and it is not necessary to refer to them at all. The starting point for this present decision is the conclusion in that judgment, that the breaches discovered in the course of the respondent's conduct of his relations with Kentford Securities and his activities as auditor and director were in the words of Mr. Justice O'Donnell "very grave".

In the circumstances with which the court is presented, the only issue is the length of the disqualification and indeed Mr. Hunt on behalf of the respondent has made it clear that he does not seek the imposition of any conditions. Then the court is called upon to decide what the duration of the disqualification should be.

Having recalled that the breaches committed by the respondent as set out in the judgment of Mr. Justice O'Donnell are very grave, it is acknowledged that there are very significant mitigating factors and Mr. Murray on behalf of the Director has fairly acknowledged them. They are principally: that the fault found against the respondent did not lead to any identifiable loss being suffered by any individual person; secondly, that they occurred in the words of Mr. Murray "some time ago", but in fact a very considerable time ago, amounting to a period of some twenty years; thirdly that to date, already before a disqualification order is made, these events and the findings of the courts have had an adverse effect on his practice; fourthly, the fact that the proceedings themselves have had an impact on the respondent. The court thinks it proper to add to that, that it is demonstrable that, for a good number of years now, the respondent has been in good standing in his profession, that there have been

no other complaints about him and that he has become a fellow of the Institute. All of those redound significantly to his credit.

Nonetheless, the court is confronted with the decision as to what period of disqualification is appropriate. Having regard to the analysis of the section and the light, insofar as any light can be cast by Section 150, looking particularly at the facts of the case the court could see that it could justify a period of five years disqualification but the court considering the unique facts and circumstances which have been mentioned in very brief form so far, believes that the justice of the case would be met by a period of disqualification of two years. That is the period that the court proposes to impose while it will again emphasise, in the unusual and unique circumstances of this case.

On the questions of costs, the court will not interfere with the Order made in the High Court which was to make no Order as to costs but the Director is entitled to the costs of the appeal. It appears that no Order is necessary in relation to another Order already made in the High Court.

A handwritten signature in black ink, appearing to read 'Niall Kennedy', is located in the lower right quadrant of the page. The signature is fluid and cursive, with the first name 'Niall' being more prominent than the last name 'Kennedy'.