



STATUTORY INSTRUMENTS.

S.I. No. 362 of 2024



RULES OF THE SUPERIOR COURTS (ORDER 11) 2024

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of section 67 of the Courts of Justice Act 1936, and reconstituted pursuant to the provisions of section 15 of the Courts of Justice Act 1953, by virtue of the powers conferred upon us by section 36 of the Courts of Justice Act 1924, and section 68 of the Courts of Justice Act 1936 (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961), and section 14 of the Courts (Supplemental Provisions) Act 1961, do hereby make the following Rules of Court.

Dated this 13th day of May 2024.

Donal O'Donnell (Chairperson)

David Barniville

Elizabeth Dunne

Brian R. Murray

Nuala Butler

Richard Humphreys

Siobhán Phelan

Michele O'Boyle

Áine Hynes

James Finn

Mary Cummins

John Mahon

I concur in the making of the following Rules of Court.

Dated this 17th day of July 2024.

Helen McEntee

Minister for Justice

S.I. No. 362 of 2024

RULES OF THE SUPERIOR COURTS (ORDER 11) 2024

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Order 11) 2024, shall come into operation on the 31st day of July 2024.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2024.

2. These Rules shall apply in proceedings in which an application to the High Court for leave to serve proceedings or notice of proceedings outside the jurisdiction of the State is made on or after the date on which these Rules come into operation.

3. The Rules of the Superior Courts are amended:

- (i) by the substitution for Order 11 of the Order set out in Schedule 1;
- (ii) by the substitution for rule 26 of Order 12 of the following rule:

“26.(1) A defendant who contests the service on him or her of any summons or other originating document or notice of same, and who has not entered an appearance contesting jurisdiction, may deliver to the Registrar of the Central Office and copy the plaintiff or other moving party a written notice, entitled as in the action, cause or matter concerned, stating that he or she contests the service of the summons or document or notice thereof.

(2) Promptly after delivering any such notice, the defendant shall apply to the Court by motion on notice to the plaintiff or other moving party for an order to set aside service, or to discharge the order authorising such service, without prejudice to the right of the plaintiff or other moving party to apply to the Court for an order deeming or declaring such service good and effective.

(3) No request or application for judgment in default of appearance by a defendant who has delivered a notice in accordance with sub-rule (1) may be allowed until the notice has been withdrawn by the party who delivered it or

the Court has made an order refusing to set aside service or refusing to discharge an order authorising service, or has made an order deeming or declaring such service good and effective.”

4. The form in Schedule 2 shall be added to Appendix A, Part II to the Rules of the Superior Courts, immediately following Form No. 9.

Schedule 1

“Order 11 - Service Out of the Jurisdiction with prior leave of the Court

1. Save as otherwise provided for in Orders 11A, 11B, 11C, 11D and 11E, service out of the jurisdiction of an originating summons or notice of an originating summons may be allowed by the Court whenever:

- (a) the action concerns land situate within the jurisdiction (with or without rents or profits), or the perpetuation of testimony relating to land within the jurisdiction;
- (b) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action;
- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction;
- (d) the action is for the administration of the personal estate of any deceased person, who, at the time of his or her death, was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of the State;
- (e) the action is one in respect of a contract
 - (i) made within the jurisdiction;
 - (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
 - (iii) by its terms or by implication to be governed by Irish law, or is one brought in respect of a breach committed within the jurisdiction of a contract wherever made, even though such breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction;
- (f) the action is founded on a tort committed within the jurisdiction;
- (g) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance or other wrong within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof;
- (h) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction;
- (i) the proceeding relates to a child or to a relevant person within the meaning of section 2(1) of the Assisted Decision-Making

(Capacity) Act 2015 who is habitually resident in, or a citizen of, Ireland;

- (j) the proceeding is an interpleader proceeding relating to property within the jurisdiction;
- (k) the proceeding:
 - (i) relates to an arbitration held or to be held within the jurisdiction;
 - (ii) relates to relief within the jurisdiction in connection with an arbitration held or to be held outside the jurisdiction;
- (l) the proceeding is by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say sale, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under sub-head (e) of this rule) any personal judgment or order for payment of any moneys due under the mortgage.
- (m) the proceeding is to enforce a right of action arising within the jurisdiction which concerns personal property situate within the jurisdiction;
- (n) the proceeding is brought under the provisions relating to carriage by air of the Air Navigation and Transport Act 1936;
- (o) the proceeding relates to a ship registered or required to be registered under the Mercantile Marine Act 1955, or any share or interest therein;
- (p) the proceeding relates to the ownership of a trade mark registered or sought to be registered in the Industrial and Commercial Property Registration Office;
- (q) the proceeding is brought to enforce any foreign judgment;
- (r) any relief is sought in proceedings commenced in accordance with Order 136 of these Rules;
- (s) any equitable relief (including relief against a defendant as constructive trustee, or as trustee of a resulting trust) not previously mentioned in this sub-rule is sought against a defendant in proceedings properly instituted or capable of being instituted within the jurisdiction;
- (t) the action is for, or includes a claim for, disclosure of information concerning the identity of a wrongdoer or what has become of the property of a victim of wrongdoing, in circumstances where:
 - (i) the action or claim for such information is brought or is made for the purpose of proceedings within the jurisdiction, on a cause of action instituted or capable of being instituted within the jurisdiction, which are in being or which are

intended, subject to the content of the information sought, to be commenced, and

- (ii) the disclosure sought would be available by order against a person within the jurisdiction;
- (u) the summons is issued in a probate action concerning the estate of a person domiciled or ordinarily resident in the State or concerning real or personal property situated in the State;
- (v) jurisdiction to award relief against a person out of the jurisdiction is given to the Court by any enactment or rule of law not previously mentioned in this sub-rule or the exercise of extra-territorial jurisdiction is otherwise permissible under Article 29.8 of the Constitution as being in accordance with the generally recognised principles of international law.

2. Where leave is asked from the Court to serve a summons or notice thereof under rule 1, the Court shall have regard to the generally recognised principles of international law (and may for that purpose require the filing of written legal submissions) and whether the applicant has shown prima facie grounds that he or she has a good cause of action on the merits.

3. (1) The parties to any contract may agree:

- (a) that the Court shall have jurisdiction to entertain any proceeding in respect of such contract, and also, or in the alternative;
- (b) that service of any summons in any such proceeding may be effected at any place within or out of the jurisdiction on any party or on any person on behalf of any party or in any manner specified or indicated in such contract.

(2) In any such case, notwithstanding anything contained in these Rules, service of any such summons at the place (if any) or on the party or on the person (if any) or in the manner (if any) specified or indicated in the contract shall be deemed to be good and effective service wherever the parties are resident. If no place, or mode, or person be so specified or indicated, service out of the jurisdiction of such summons may be ordered.

4. In probate actions, the State shall be deemed to be a suitable and appropriate forum where the action concerns real property situated in the State.

5. (1) Every application for leave to serve a summons or notice of a summons on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence:

- (i) identifying the particular sub-head of sub-rule (1) under which leave is sought and setting out and verifying the facts which it is alleged establish that the provisions of the sub-head concerned are engaged;
- (ii) stating that in the belief of the deponent the plaintiff has a good cause of action, and
- (iii) showing in what place or country such defendant is or probably may be found, and

- (iv) stating whether in the belief of the deponent such defendant is a citizen of Ireland or not, and
- (iv) where leave is asked to serve a summons or notice thereof under rule 1 stating the particulars necessary to enable the Court to exercise a due discretion in the manner specified in rule 2.

(2) No leave shall be granted unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

6. Such application shall be made before the issue of the summons, and the affidavit to ground the same shall, when no proceeding is pending, be entitled as between the parties to the intended proceeding and “In the Matter of the Courts of Justice Acts 1924 to 2019, and the Courts (Supplemental Provisions) Acts 1961 to 2023.”

7. Any order giving leave to effect service or give notice out of the jurisdiction shall limit a time after such service or notice, within which the person to be served is to enter an appearance, such time to depend on the place or country where or within which the summons is to be served, or the notice given, and such leave may be given by the same order by which leave is given to issue the summons for service out of the jurisdiction or of which notice is to be given out of the jurisdiction.

8. Where it appears to the court that the defendant is not, or is not known or believed to be, a citizen of Ireland, notice of the summons, and not the summons itself, shall be served upon him.

9. Subject to the provisions of this Order, notice in lieu of service shall be given in the manner in which summonses are served.

10. Where a defendant wishes to enter an appearance to contest the jurisdiction of the Court following service in accordance with this Order, he or she may do so by entering an appearance in Form No. 10 in Appendix A, Part II.

11. Whenever an order is made giving leave to serve a summons or notice thereof on a defendant out of the jurisdiction, a copy of such order shall be served along with the summons or notice as the case may be.

12. This Order shall apply, so far as practicable and applicable, to proceedings whether instituted by originating summons or in some other manner, and to any order or notice in any such proceedings. Where the person to be served is not a citizen of Ireland, a copy of the originating document (other than an originating summons) or of the order or notice shall be served instead of the original, together with an intimation in writing that (as the case may be) a proceeding or process in the form of the copy has been issued or otherwise launched or an order in the terms of the copy made.

13. Nothing in this Order shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the

proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening.

14. For the purpose of this Order:

“defendant” includes the responding party to any initiating document;

“mortgage” means a mortgage charge or lien of any description; the expression;

“mortgagee” means a party for the time being entitled to or interested in a mortgage;

“mortgagor” means a party for the time being entitled to or interested in property subject to a mortgage;

“personal property situate within the jurisdiction” means personal property which, on the death of an owner thereof intestate, would form the subject matter for the grant of letters of administration to his or her estate out of the Probate Office;

“summons” includes, where the context so admits or requires, any other originating document.”

Schedule 2

No. 10

O.11, r. 10

MEMORANDUM OF APPEARANCE CONTESTING JURISDICTION

THE HIGH COURT

Between

AB,

Plaintiff

and

CD

Defendant

Enter an Appearance for CD, the [†-named] defendant in this action without prejudice and solely to contest the jurisdiction of the court.

Dated

Signed EF

Solicitor for the [†-named] defendant

The registered place of business of EF is.....*and E.F. consents to the service of documents in the proceedings by electronic mail to

[or CD, the defendant in person

The address at which CD ordinarily resides isand *the address for service of C.D. is..... *C.D. consents to the service of documents in the proceedings by electronic mail to.....]

To: The Registrar of the Central Office.

Take Notice that I have this day entered an appearance without prejudice and solely to contest the jurisdiction of the court at the Central Office, Four Courts, Inns Quay, Dublin 7, for the above defendant to the [notice of] originating summons (or other originating document) in this action.

Dated

Signed

To:

†Insert as appropriate

*Delete where inapplicable

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules amend Order 11 of the Rules of the Superior Courts in relation to seeking leave to serve outside the jurisdiction in certain categories of proceeding including actions in respect of contracts, proceedings relating to arbitrations and equitable reliefs and also provide for a new Form 10 in Appendix A to the rules where a defendant wishes to enter an appearance to contest the jurisdiction of the court.

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