

AN ARD CHURT  
**THE HIGH COURT**

Record No 2009 No. 233 MCA

Between:

**JONATHAN O'DONNELL**

Applicant

-and-

**SHELL E&P IRELAND LIMITED**

Respondent

**REPLYING AFFIDAVIT OF JONATHAN O'DONNELL**

I, Jonathan O'Donnell, fisherman, of Shore, Porturlin, Ballina, County Mayo aged eighteen years and upwards to hereby MAKE OATH and say as follows:

1. I am the applicant in the above entitled proceedings and I make this affidavit from facts within my own knowledge save where so otherwise appears and where so appearing I believe the same to be true and accurate.
2. I beg to refer to the pleadings and proceedings already had herein when produced. In particular I beg to refer to the affidavits of Agnes McLaverty and Gavin Lawlor and I make this affidavit in reply thereto.
3. I am advised that many of the issues raised by Ms. McLaverty and Mr. Lawlor relate to questions of law as to whether the works currently being undertaken by

the respondent require planning permission and/or approval under the Planning and Development Act 2000 or whether they are exempted development within the meaning of the Planning and Development Regulations 2001 to 2008. I am advised that this is more properly a matter for legal argument before this Honourable Court and for that reason I do not intend to address each of the arguments made by Ms. McLaverty and Mr. Lawlor in defence of the works currently being undertaken at Glengad, Co. Mayo.

4. Ms. McLaverty states that I am incorrect in my description of the works currently taking place in Glengad and that in particular no works are taking place that relate to the construction of the Landfall Valve Installation. Works have taken place on the site of the proposed site of the Landfall Valve Installation. These works are taking place on the exact site identified by the Respondents in the most recent application for to An Bord Pleanála for approval for the modified route of the onshore pipeline. The works also include the construction of fencing and of an access road which form part of the description of the Landfall Valve Installation contained in the Environmental Impact Statement prepared by the Respondents. In the circumstances, given that the works were taking place on the site of the Landfall Valve Installation and involved pieces of work included in the application for approval of the Landfall Valve Installation I believed and still believe that the Respondent was engaged in construction of the Landfall Valve Installation. It cannot be a simple coincidence that works allegedly associated with pulling the off shore pipe onland are indistinguishable from works required for the Landfall Valve installation.
5. Works are currently being carried out on and around the site of the Landfall Valve Installation in Glengad, including works on the foreshore. This is admitted in the affidavit of Ms. McLaverty. I am advised that the works carried out by the Respondents and the works that continue to take place, notwithstanding that they may not relate to the construction of the Landfall Valve Installation, are unauthorised development and are works that are not exempted development.

6. I refer to the affidavit of Ms. McLaverty where she states that structures in place at the site of the proposed Landfall Valve Installation relate to the laying and pulling into the landfall of the off-shore section of the pipeline. I believe that such works have already taken place and that that section of the off-shore pipeline has been pulled to the landfall and laid in place by the Respondents. I am advised that these works are unauthorised and that the Respondents do not have the permission to carry out these works in accordance with the Planning and Development Act,

7. I am advised by my lawyers that the works being carried out by the Respondents at Glengad are in breach of sections 182(e), 182(d) and 225 of the Planning and Development Act, 2000 and are works that do not benefit from the exemptions provided for in Classes 16, 25(c) and 25(d) of the Planning and Development Act, 2000.

8. The laying of the Pipeline, whether for waste water or for gas or any associated pipe at sea is also unauthorised development for the reasons set out in the Points of Claim which set out legal argument in respect of the matters of which I make complaint and upon which marked with the letters "JO"D" I have signed my name prior to swearing this affidavit. I verify facts relied upon in the Points of Claim.

9. I therefore pray this Honourable Court for the relief sought in the Notice of Motion.

*Jonathan O'Donnell*

SWORN by the said Jonathan  
O'Donnell  
at *GLEN GARD, FULLANMOMAS*  
in the County of Mayo  
this *Monday* of *NOVEMBER* 2009

before me a Commissioner for  
Oaths/~~Practising Solicitor~~ and I  
know the Deponent.

*Michael J. Carolan*  
COMMISSIONER FOR  
OATHS/~~PRACTISING~~  
~~SOLICITOR~~

This Affidavit is filed the \_\_\_\_\_ day of November 2009 on behalf of the Plaintiff by  
McGarr, Solicitors, 12 City Gate Lr. Bridge Street Dublin 8

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**RECORD NO. 2009 MCA**

**BETWEEN**

**JONATHAN O'DONNELL**

**Plaintiff**

**-AND-**

**SHÉLLE & P IRELAND LTD.**

**Defendant**

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**Affidavit of Jonathan O'Donnell**

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**McGarr Solicitors  
12 City Gate  
Lower Bridge Street  
Dublin 8.**

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Exhibit "JO'D" of  
AFFIDAVIT OF Jonathan O'Donnell

*Jonathan O'Donnell*

*Michael Jay Cahalan*

McGarr Solicitors  
12 City Gate  
Lower Bridge Street  
Dublin 8.

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**POINTS OF CLAIM**

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1. The Applicant is a resident of County Mayo and is a commercial fisherman who earns his livelihood primarily in Broadhaven Bay, Co. Mayo.
2. The Respondent is executing a project comprising an assembly of gas wells 80 kilometres offshore the coast of Co. Mayo, a Gas Refinery at Bellanaboy, County Mayo and a network of pipes connecting the wells to the refinery and discharging waste from the refinery out to sea.
3. In these proceedings the applicant makes complaint that the respondent has carried out unauthorized development and intends to carry out further unauthorized development at Glengad, County Mayo. The respondent has

already engaged in works amounting to unauthorised development by engaging in works on the site of the proposed Landfall Installation Valve situated at Glengad, County Mayo and a road adjacent thereto. The Respondent intends to carry out further unauthorised development in constructing waste water pipe which shall run from the respondent's gas refinery at Bellinaboy, County to Mayo to a point at sea outside Broadhaven Bay. The Respondent has engaged in unauthorised development by constructing an off shore gas pipeline from the coast of County Mayo to the gas wells located off the coast of County Mayo.

4. The gas pipeline that runs from the wellheads to landfall at Glengad, County Mayo is not an underground pipeline and therefore is not exempted development within the meaning of Class 25 (c) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2008. Works related to the laying and/or construction of the said pipeline at the proposed site of the Landfall Valve Installation are not exempted development in accordance with Class 25(c).

5. The works carried out by the Respondent at Glengad are not exempted development within the meaning of Class 25 (d) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2008 as the Respondent is not a gas undertaking within the meaning of the Planning and Development Regulations 2001 to 2008.

6. Works consisting of the laying and/or constructing of the offshore gas pipeline after 31<sup>st</sup> January 2007 is unauthorised development as said works did not have the benefit of an approval granted in accordance with section 182(c) and section 182(d) of the Planning and Development Act, 2000 (as amended).

7. The Respondent has applied for approval for the onshore sections of the gas pipeline located from landfall at Glengad to the gas refinery at Bellinaboy, Co. Mayo in accordance with section 182(c) and section 182(d) of the Planning



and Development Act 2000 but has failed to apply for approval for the sections of the offshore pipeline that were not constructed as of 31<sup>st</sup> January 2007 including the laying and pulling of the offshore pipeline on to the landfall.

8. The water outfall pipe requires planning permission in accordance with section 225 of the Planning and Development Act, 2000 it being development on the foreshore that is not exempted development. The provisions of section 225(3) of the Planning and Development Act 2000 do not apply to the water outfall pipe as it a pipe for the purposes of carrying treated surface water run-off and therefore is not a pipe for the purposes of carrying water.

9. The Respondent has constructed an access road to the Landfall Valve Installation and has constructed fencing around the site of the Landfall Valve Installation without the benefit of planning permission. The said works do not constitute exempted development within the meaning of either Class 25(c) or (d) of the Planning and Development Regulations 2001 to 2008 as they do not amount to construction of a gas pipeline nor are they works consisting of the laying underground of mains, pipes, cables or other apparatus.

10. The Respondent obtained retention planning permission for a section of the access road from An Bord Pleanála (Reference PL16.2223463). The said retention planning permission does not apply to the entire road constructed by the Respondent and in particular does not apply to the section leading to the Landfall Valve Installation.

11. The said works do not amount to exempted development in accordance with Class 16 of the Planning and Development Regulations 2001 to 2008 in that they are not works being carried out pursuant to a permission granted under the Planning and Development Act 2000 nor are they exempted development. No such permission has been granted in respect of any development at Glengad.

