

**BETWEEN:****PERMANENT TSB PLC FORMERLY IRISH LIFE & PERMANENT PLC****Plaintiff****– and –****JAMES WALSH****Defendant****JUDGMENT of Mr Justice Max Barrett delivered on 31st January, 2019.**

1. By amended civil bill dated 22.12.2014, the plaintiff claims, inter alia, as follows:

**"2.1 In relation to Account Number...[ending 5594].***By letter dated 29 May 2001, the Plaintiff agreed to make a loan facility available to the Defendant....**2.2 On or about 11 July 2001, the Defendant acknowledged in writing...acceptance of the Plaintiff's letter of approval.**2.3 On or about 15 August 2001 the sum of £150,000...was advanced by the Plaintiff to the Defendant in pursuance of the letter of approval and the General Mortgage Loan Approval conditions.**2.4 By way of security...the Plaintiff relies on the deed of mortgage and charge executed by the Defendant on 18 November 1991 ('the Mortgage') over ALL THAT AND THOSE...('the Mortgaged Property')....**2.6 In breach of the terms of the Mortgage and of the letter of approval and the General Mortgage Loan Approval conditions: (i) on or about 09 September 2009 and on various dates thereafter, the Defendants failed to make repayments of principal and/or interest as they fell due; (ii) the Defendant defaulted in making payment of the monthly principal and/or interest, with the arrears amounting to €125,989.40 as at 09 December 2014; (iii) despite written demand of 03 November 2014, the Defendant failed to repay the secured monies or any part thereof.***2.7 In relation to Account Number...[ending 5081]***3. By letter dated 11 November 2003, the Plaintiff agreed to make a loan...available to the Defendant....**4. On or about 10 December 2003, the Defendant acknowledged in writing acceptance of the Plaintiff's letter of approval....**5. On or about 11 May 2004, the sum of €38,000.00 was advanced by the Plaintiff to the Defendant....**6. By way of security for the said loan...the Defendant excluded a mortgage and charge in favour of the Plaintiff on 15 April 2004 (the 'Mortgage') over...the 'Mortgaged Property'....**7. The Mortgage expressly incorporated the Plaintiff's mortgage conditions 2002....**8. The terms of the Mortgage were duly accepted and signed by the Defendant....**10. In breach of the terms of the Mortgage and of the letter of approval and the General Mortgage Loan Approval conditions: (i) on or about 02 October 2009 and on various dates thereafter, the Defendant failed to make repayments of principal and/or interest as they fell due; (ii) the Defendant defaulted in making payment of the monthly principal and/or interest, with the arrears accruing to twice the due monthly amount and continuing to be in arrears from 31 October 2009; (iii) the Defendant has failed to make any repayments since 11 May 2010 and (iv) despite written demand of 03 November 2014, the Defendant failed to repay the secured monies or any part thereof.**11. The Plaintiff's power to take possession of the Mortgaged Property and the Plaintiff's power to sell the Mortgaged Property have arisen and become exercisable."*2. On 18.01.2018, the Circuit Court granted a possession order in respect of the defendant's home in County Dublin. This is an appeal against same and involved a *de novo* hearing.

3. An event of significance to these proceedings is a meeting that took place in March 2012, at a hotel in Bray, between Mr Walsh and a Mr Keenan of Permanent TSB. Mr Keenan brought to that meeting a form which, Mr Walsh avers, "[Mr Keenan] informed me summarised...my indebtedness to the bank". The key part of that form states:

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<b>Name</b>	James Walsh
<b>Mortgage Account Reference No(s)</b>	[Account Ending...5594] [Account Ending...5081]
<b>Outstanding Mortgage Balance (€)</b>	18604.00
<b>Est'd Current Value of Primary Residence (€)</b>	550000.00

4. The form clearly indicates that the amount outstanding on both accounts was €18,604. The plaintiff now claims that the form referred only to the €38,000 loan account. That is not what the form states. But what it states is not determinative of this appeal. At issue is whether agreement was reached at the meeting whereby payment of €18,604 would extinguish Mr Walsh's liability to Permanent TSB in respect of the loans in issue. Mr Walsh avers that "it was...stated to me by Mr Keenan that nothing further would happen if I paid the €18,604". In his later affidavit evidence, Mr Walsh avers that "[T]here is objective evidence of such an agreement in the clear and unambiguous terms of document drafted by the Mortgage Manager of the Plaintiff Bank [i.e. Mr Keenan]; the repayments made on a monthly basis [after the meeting] in the sum of €453.21, the listing of two account numbers; and the 'Outstanding Mortgage Balance' of €18,604.00 which was fully paid". But Mr Walsh's own later letters to the plaintiff are not consistent with his contention that the alleged agreement was concluded. Two key letters present:

#### Letter #1

"Re: Discussions 27th March 2012.

*Following our discussions, I discussed our conversation and the written outcome attached to your SFS Form with my accountant and have decided as follows. I will make another application to my local credit union for funding to 'buy' out my debt to the Revenue Commissioners. Should my application be successful this will effect a saving of six hundred euro per month on outgoings. Four hundred and fifty of this will be paid to the Permanent TSB mortgage account with immediate effect. This will be better for me than 'giving away' my present home. I will also move from my present accommodation in the ground floor flat to one of the vacant flats that I have been unable to let. I will in turn refurbish my present accommodation and hope to find it easier to let.*

James Walsh

April 26th 2012."

#### Letter #2

"Re: Meeting March 27 2012.

Dear Mr Keenan

*I reviewed the note at the end of your report on our meeting and I came to the conclusion that it would not be a wise decision on my part to sell the property at this time. The property would not realise even a modest value for its size and location. There would also be the long wait and of course the increasing interesting [sic]. A smaller property on the East side of this location has had the sign 'Sale Agreed' posted in the last two weeks. The 'For Sale' sign was put up on the First of July 2009. In the meantime I have being [sic] making strenuous efforts to consolidate my other outstanding loans with a view to reducing my outgoings and in turn to enable me to pay the monthly mortgage amount to TSB. I have been at last successful with my local Credit Union and with effect from ???/?? I will be in a position to pay the monthly sum of 453.21 euro towards my mortgage account. I will also try as and when possible to reduce the overall account.*

Yours sincerely

James Walsh"

5. These letters do not point to the execution of a concluded restructuring agreement. They read like 'update' letters as to what Mr Walsh is doing to ensure he pays whatever he owes.

6. Suppose there was an agreement between the plaintiff and Mr Walsh whereby the plaintiff agreed it would take less than was owing to it in settlement of the liabilities outstanding between it and Mr Walsh. What then? The plaintiff rightly contends that thanks to *Pinnel's Case* (1602) 5 Co. rep. 117a any such agreement (which the plaintiff denies) would be unenforceable. The effect of *Pinnel's Case* is that if a liquidated sum is owed by A to B, a promise by B to take a lesser sum in satisfaction of the larger debt will not bind B. That this is the position at law (and it is) greatly undermines Mr Walsh's case.

7. The remaining possibility raised is promissory estoppel. When it comes to same the court recalls Griffin J.'s observation in *Doran v. Thompson* [1978] I.R. 223, 230 that "Where one party has, by... words or conduct, made to the other a clear and unambiguous promise or assurance...intended to affect the legal relations between them and to be acted on...and the other party has acted on it by altering his position to his detriment, it is well settled that the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made". The court does not consider that the existence of the requisite "clear and unambiguous promise" has been established. Even if it had been (and it has not), the loan was to reduce Mr Walsh's outgoings generally and there is nothing to indicate that this was not going to be done in any event. And if it reduced outgoing payments, benefitting Mr Walsh financially, the court struggles in any event to see how detriment presents.

8. For the reasons stated above the court declines to interfere with Circuit Court decision.