

THE HIGH COURT**2011 19CA****BETWEEN****DENIS O'CONNOR TRADING AS BBT AND NEALE O'HANLON TRADING AS BBT****PLAINTIFFS****AND****JOHN HANRAHAN****DEFENDANT****Judgment of Mr. Justice Hedigan delivered on 20th day of February, 2013.**

1. This is an appeal from a Circuit Court order made by Her Honour Judge Olive Buttimer at Clonmel Circuit Court on the 1st February, 2011. The order was for possession and sale of lands comprised in Folio 993F of the register, County Tipperary, in accordance with a deed of charge dated the 7th July, 2008, made between the defendant and the plaintiffs and registered on the 17th July, 2008. The appeal has been adjourned on a number of occasions. It came before me on the 20th November, 2012, and there being no appearance by the defendant, I heard the plaintiffs' application for judgment and dismissed the appeal and affirmed the Circuit Court order.

The defendant appeared personally the next day before me. He asked to be allowed to defend the appeal. I allowed him bring a motion to re-enter the appeal. On the 21st January, I heard this motion. I set aside the judgment granted and allowed the defendant to defend the appeal. The appeal came on today. I have had the benefit of the case being opened by counsel for the plaintiffs. I also had the benefit of reading the papers filed herein, notably the affidavit of the defendant sworn on the 18th January and filed on the 21st January. In that affidavit the defendant set out some of his complaints about the plaintiffs' case. I allowed the defendant call two witnesses and examine them. I also heard his former solicitor, Joseph Kelly, who drafted the charge on which these proceedings are based. The defendant does not deny that the monies claimed are due as pleaded and agrees that he signed the charge. In his submissions and his examination of the three witnesses, the defendant has ranged far and wide. His main concerns focus on the validity of the charge which it is acknowledged was initially returned as unsigned. He maintains it should have been re-executed. He further believes the plaintiffs' fees are covered by an order for costs awarded to him in another case which he refers to as the "Judge McMahon case". He has expressed concern over a letter written to him by James Kelly & Sons, Solicitors, dated the 15th September, 2009 and notably paragraph 6 thereof.

Taking these concerns in order, I see no invalidity of the charge arising from the fact that having been submitted initially it was returned as undated. The defendant submits this means it should have been re-executed. No authority was opened to support this proposition and I am unaware of any. Having been returned, the evidence is it was re-submitted and was admitted to the register as a valid charge where it remains. The plaintiffs concede that twelve per cent of the fees charged are in respect of work for the "Judge McMahon case". Yet they still constitute fees acknowledged as due incurred by the defendant and remaining unpaid. No saving provision is to be found in the charge in respect of fees that could be recovered elsewhere nor would one expect there to be. The letter of the 15th September, 2009 refers to a charge that was given to the defendant's solicitor, James J. Kelly, in order to secure their fees for legal service. It refers at paragraph 6 to the charges in favour of themselves and another one for the plaintiffs, the subject matter of these proceedings. The defendant wonders why over a year after the charge was registered, Mr. Kelly is still asking him about the extent of the area delineated in the map. This appears to be a misunderstanding of the letter. The letter is referring to inquiries regarding the map which Mr. Kelly had made on the 3rd June, 2008. The inquiries and confirmation was sought in June 2008 and not on the date of the letter. The letter states at its beginning that it is a history of events. Almost all the submissions made by the defendant and most of his questions to the witnesses were in relation to cases other than this case and charges held by others, notably the charge held by James J. Kelly & Sons, Solicitors. I have tried as best I can to extract from the defendant the points that are relevant to this case and which might assist him and the above represents the best I can do. I can, however, find no invalidity in the charge and its registration in Folio 993F. The monies claimed are admitted as owed, demand has been properly made and proved. The monies have not been paid and thus the charge is crystallised. The plaintiffs, thus, are entitled to their order. The order of the Circuit Court must therefore be affirmed and the appeal will be dismissed.