

THE HIGH COURT

2011 652 JR

Between:**Leo Wellstead****Applicant****And****Judge Michael White and Paul Fetherstonhaugh****Respondents****Judgment of Mr Justice Michael Peart delivered on the 25th day of November 2011:**

The applicant who represents himself on this application seeks leave to seek reliefs by way of Judicial Review. I directed that the application be brought on notice to the Ulster Bank which has obtained an order for possession due to non-payment on foot of its mortgage, and to his former partner, Ms. Langmaid, who is a joint owner of the premises and who consented to the order for possession being made. She no longer resides in the premises. Only the applicant and his son are currently residing there.

The relief sought by him in his Statement of Grounds is described in the following terms:

"An immediate stay on eviction from my family home and a full judicial review on all aspects of repossession proceedings of all orders of the Registrar's Court and Circuit Court, Portlaoise, Co. Offaly".

The premises in question are jointly owned by the applicant and Ms. Langmaid, and were mortgaged by them to Ulster Bank under a Deed of Charge dated 14th March 2003.

Following default in repayments, the bank instituted ejectment proceedings, and ultimately an order was made by the County Registrar, the second named respondent on the 23rd February 2009, but imposed a stay on repossession for a period of six months.

By that time the applicant and Ms. Langmaid were living apart but the applicant remained in the premises.

At the end of that six month period the applicant sought a further stay but was refused by the County Registrar. Ultimately on appeal, a further stay was granted for three months, but with the consent of all parties arrangements for the sale of the property were set out by the Court, such as the appointment of an auctioneer.

The matter came back before the High Court on a number of dates in 2010, including on foot of an application by Ulster Bank to have the stay on repossession lifted, and for an order restraining the applicant from interfering with the sale of the premises. These orders were granted.

On the 27th July 2010 the stay was reinstated pending the determination of the applicant's appeal to the High Court against the County Registrar's order for possession.

His appeal was dismissed by me having heard that appeal on the 23rd February 2011, and the order of the County Registrar was affirmed.

In August 2011 a further stay was granted during the long vacation to 5th September 2011.

On the 8th September 2011 that stay was extended to the 14th September 2011 provided that the applicant files an application seeking leave for judicial review returnable for the 14th September 2011.

On the 14th September 2011 the stay was further extended to the 10th October 2011 on which date the application for such leave was moved by the applicant. However, I directed that the application be brought on notice to the bank and Ms. Langmaid, given the lengthy background to the case, and I listed that application for hearing on notice on the 1st November 2011.

It will be immediately obvious that the order for possession which the applicant seeks to quash has been in existence for some two years and nine months. It has been affirmed on appeal as outlined above. The applicant has been able to remain in possession since that date by virtue of the various stays which have been put in place, while the applicant was taking the various steps described. The applicant has not been making any repayments on foot of the mortgage.

It goes without saying that the applicant is well out of time for seeking to challenge the order for possession. I can say that the principal reason why I directed that this matter should be brought on notice to the other parties mentioned was because firstly the applicant represents himself, and secondly because I was unsure, without submissions being made to me in this regard, whether or not the decision of Ms. Justice Dunne in *Start Mortgages Ltd v. Gunn*, unreported, 25th July 2011 was a decision which could avail the applicant also, since in that case it was a County Registrar who had made the order for possession in that case, as in this case. I was of the view at that time that if that decision could avail the applicant, the fact that it was made only on the 25th July 2011 could constitute a sufficient reason to extend the time for seeking leave, albeit so late after the date of the order in question.

However, as is made clear on page 28 of the said judgment, that case in fact has no relevance to the present case given the fact that the charge in question in the present case is dated 14th March 2003, and the order for possession itself was made in February 2009.

That was the only possible basis on which I considered that there might be a possible argument for extending the time for challenging the jurisdiction of the County Registrar to make the order for possession.

I am therefore satisfied that on this ground alone, namely delay, leave must be refused, as there has been no reason adduced by evidence which either explains or justifies the delay in challenging the validity of the order for possession.

In any event, and even if delay was not a bar to this application, I am satisfied that no arguable ground is advanced for judicial review. There are assertions made by the applicant in his Statement of Grounds as to the lack of jurisdiction in the County Registrar, but no substantive ground is put forward in that regard.

The applicant is also seeking leave to argue that Ulster Bank have no longer any entitlement to benefit from the order for possession because as part of some unspecified securitisation agreement the bank has sold the applicant's mortgage, and is therefore no longer owed anything on foot of the mortgage herein.

He complains that he has sought information and documents from Ulster Bank to back up his assertion but has received no satisfactory response in that regard. He submits that until Ulster Bank provides him with such information and documentation he is prevented from proving that argument, and he seeks an order from this Court directing Ulster Bank to provide the required information to him, and he seeks a continuation of the stay on repossession until all that is done, and until the Court determines that matter.

His grounding affidavit characterises the action by Ulster Bank in seeking repossession in circumstances where it no longer owns the mortgage and has been repaid the money lent to the applicant is fraudulent, misleading and premeditated.

In relation to the last argument, Counsel for the bank has referred to clause 17 of the mortgage deed executed by the applicant and his former partner, which contains a consent by the mortgagors to such a disposal of the benefit of the mortgage to another party by way of a securitisation scheme or otherwise, and it is submitted that this is a point which it is simply not open to the applicant to argue, even if he was in time to do so, since he has consented to that occurring. I agree.

But there is another obstacle which faces the applicant, and which he has not addressed, and it is that there is nothing unusual or mysterious about a securitisation scheme. It happens all the time so that a bank can give itself added liquidity. It is typical of such securitisation schemes that the original lender will retain under the scheme, by agreement with the transferee, the obligation to enforce the security and account to the transferee in due course upon recovery from the mortgagors.

In my view, discovery would not be ordered on a leave application in any event. But the applicant would have to overcome the arguability threshold for the point that he is making in relation to securitisation, and in my view and for the reasons outlined above he cannot do so.

Every allowance has been made by me for the fact that the applicant appears personally. Equally, he has been greatly indulged since August 2011 by stays being granted so that he could put his best foot forward on the present application. But there comes a time when this must come to an end, so that those for whose benefit the order for possession was made can have the benefit of it.

For all the reasons stated, I therefore must refuse leave to seek the reliefs being sought. Given the time of year approaching I will grant one final stay to expire on the 10th January 2012, after which date the bank will be entitled to enforce the order for possession and recover possession.