Neutral Citation Number: [2009] IEHC 545

THE HIGH COURT

1987 641 SP

BETWEEN

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND

PLAINTIFF

AND

PATRICK MOFFITT

DEFENDANT

AND

ACC BANK PLC

APPLICANT/NOTICE PARTY

Judgment of Mr. Justice McMahon on the 8th day of December, 2009

1. This is an application by the applicant/notice party (hereafter the ACC) that it be substituted as plaintiff and allowed take over the benefit of the order for sale made in favour of the plaintiff (hereafter the Bank of Ireland) dated 30th November, 1987, as amended by High Court order on 26th November, 1990. This latter amendment mainly related to the substitution of new folio numbers for earlier folio numbers which had changed in the meantime.

2. On 21st January, 1977, and 18th December, 1979, the ACC lent monies to the defendant, Mr. Moffitt (the defendant) and secured these loans with charges on certain properties owned by the defendant. Both charges covered all sums due and owing by the defendant to the ACC Bank. Subsequently, three term loan facilities were advanced by the ACC to the defendant on 24th February, 1977, 15th April, 1977 and 18th December, 1979.

3. On 10th March, 1986, ACC entered two separate judgments in the Circuit Court in the amounts of €17,780.18 and €17,341.62 (expressed here in euro equivalent). Both of these judgments related to arrears that had accrued with respect to the loan facilities extended to the defendant. On 9th July, 1986, the ACC registered the said judgments as judgment mortgages against the defendant's interest in specific lands. On 18th March, 1987, the Circuit Court (Judge O'Higgins) granted the applicant a well charging order and an order for sale on foot of the judgment mortgages against specified lands which were identified by reference to the specific folio numbers of the Register of Freeholders, Co. Roscommon. On 10th October, 1989, the applicant demanded payment from the defendant of all monies due and owing on foot of the well charging order and order for sale. The defendant did not respond and has not paid any monies to date. The Bank of Ireland also got a well charging order and an order for sale in respect of the defendant's lands in the High Court in November 1987 that is some eight months after the ACC's Circuit Court order for sale.

4. In March 1990, the County Registrar for Co. Roscommon commenced an Account and Enquiry in respect of the High Court. This account was never completed or certified to the court, however, apparently due to the uncertainty of a perceived dispute between the ACC and the Bank of Ireland in relation to the priority of their respective orders for sale.

5. By letters sent to the defendant on 30th April, 1998, the ACC next demanded payment of the balance of monies due on three loan facilities. These letters excluded demands for the arrears which were already the subject of the two Circuit Court judgments dated 10th March, 1986.

6. In recent years, it appears that the defendant, Mr. Moffitt, has made several attempts in the courts seeking to restrain the ACC from enforcing the Circuit Court orders. It is to be noted that, for a large part of this period, the defendant was not legally represented. On 27th July, 2007, Clarke J. in the High Court granted leave to Mr. Moffitt to amend his statement of claim in proceedings against the ACC granting him leave to address two specific issues which Clarke J. described collectively as:-

> "The circumstances in which a well charging order can have continued practical application where there has been a change in the folios in which the lands the subject of the order are comprised."

7. This order referred to the fact that since the original well charging orders were made, new folio numbers were allocated for the old folio numbers describing the lands. The order for sale which the ACC got in the Circuit Court predated the Bank of Ireland's order for sale by approximately eight months. It would appear that the ACC was a prior incumbrancer in respect of certain folios but was a puisne incumbrancer with respect to another folio in that order.

8. As already noted, the applicant now claims that as an incumbrancer at the time of the well charging order and order for sale made by the High Court in favour of the Bank of Ireland (i.e. in 1987 amended in 1990) it is entitled to the benefit of this order. There is some legal authority of this proposition. If the applicant succeeds in this claim, a further legal benefit will come its way: the High Court order made in favour of the Bank of Ireland in 1987 (and 1990) may have the effect of stopping the period of limitation from running against, not only the Bank of Ireland, but against all incumbrancers (including the ACC) of the defendant's land at that time.

9. The ACC admits that more than 12 years have elapsed from both the date of the judgment and the registration of the judgment mortgages in the Circuit Court and this may represent a problem for him if he tries to enforce them. If, however, as the applicant asserts, the High Court orders made for the benefit of the Bank of Ireland on 30th November, 1987, and

amended on 26th November, 1990, also enure for the applicant's benefit then no question of these proceedings being statute barred arises since the applicant, being associated with the Bank of Ireland's order (1987 and 1990), is well within 12 years from the dates of the Circuit Court orders made in 1986.

10. The defendant argues that a recent High Court decision over ruled the old authorities which suggested that all incumbrancers benefited from an order of sale made in favour of a third party and established that the true position was that only those incumbrancers who had proved their debt were entitled to the benefit of such orders.

11. To succeed in this application, therefore, the applicant recognises that he must establish to the satisfaction of the court that the well charging order/order for sale made in favour of the Bank of Ireland 1987 (amended 1990) enures for the benefit of all incumbrancers, of which it is one. If on the other hand, the applicant must have proven his debt before the High Court order enures for his benefit, he has no right to take over the High Court order made for the benefit of the Bank of Ireland, and cannot order the sale of the applicant's property. Moreover, time for the purposes of the twelve-year limitation period will not have stopped running for his benefit.

12. The applicant acknowledges that the very recent decision of Finlay Geoghegan J. in *Allied Irish Banks plc v. Dormer & Roe* (Unreported, High Court, 13th March, 2009) is against him in that the learned judge in that case, after reviewing the authorities, came to the conclusion that such an order for sale does not benefit all incumbrancers on all occasions, but only benefits incumbrancers who have proved their debts. Her decision in *Dormer* was not confined by the fact that the proceedings in that case were brought by the applicant as a puisne incumbrancer under O. 33, r. 8 of the Rules of the Superior Courts, something I will refer to again in this judgment. This fact in no way detracts from the general rule which she declares in broad and unqualified language. Finlay Geoghegan J. also indicated that, even if she was wrong in her main determination she was disposed to refuse the application on the ground of unwarranted delay on the part of the applicant.

13. Recognising the obstacle which the *Dormer* case represents for his client, counsel for the applicant makes three submissions to the court:-

> (i) That Finlay Geoghegan J. was wrong in law in suggesting that the notice party must have proved its debt to be entitled to the benefit of the order for sale made in favour of the Bank of Ireland and in order to stop the clock in relation to time running under the statue of limitations. The applicant argues that the clock stops once the order for sale is made and it stops in favour of all incumbrancers irrespective of when the debt is proved.
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> (ii) That even if Finlay Geoghegan J. was right in her judgment in *Dormer*, the applicant has in fact participated before the examiner to such a degree that it has engaged with the examiner and, therefore, even though there is no affidavit of debt made by the applicant, it has engaged sufficiently in the process and its interest was noted by the examiner and, accordingly, it is entitled to the benefit of the High Court order made in favour of the Bank of Ireland in this instance.
>
> (iii) From the circumstances of this case, there is no justification for ruling that the applicant herein was guilty of such delay as to justify the court's refusal of its application.

14. In *Allied Irish Bank v. Dormer & Roe (supra),* the facts were as follows. The applicant incumbrancer sought an order for sale (pursuant to O. 33, r. 8 of the Rules of the Superior Courts) of lands over which the plaintiff had obtained an order for sale. The plaintiff no longer wished to proceed with the sale and the applicant, a puisne incumbrancer, sought to be substituted as plaintiff in the proceedings.

15. In her judgment, Finlay Geoghegan J. closely examined the old case law opened to her as authority for the wider proposition, that an order for sale made by a court enured for the benefit of all incumbrancers including the applicant, who were entitled to take over carriage of the proceedings and enforce the order for sale, after the plaintiff's demands had been satisfied.

16. From a careful examination of the case law, Finlay Geoghegan J. concluded that where the court extended the benefit of its order to other incumbrancers, although broad language was sometimes used, in no case was an order made when the incumbrancer had not proven its debt.

17. Examining the position of the plaintiff and other incumbrancers in a typical case where the mortgagee seeks a well charging order and order for sale, she concluded that the plaintiff's obligation to other incumbrancers only arises after there had been an advertisement for incumbrancers, and until that time the plaintiff may vacate the order without referring to the other incumbrancers. At para. 35 of her judgment the learned judge then poses the following question and gives an unequivocal answer.

> "…does the fact that the order for sale has come into effect give an incumbrancer who has not yet proved or otherwise joined in the proceedings a right to be notified of the proceedings, order for sale and proposed application and a right to apply in the proceeding for an order for sale for the purpose of realising its debt? I have concluded that the answer to this question must be no. In reaching the above conclusion, I have taken into account those decisions to which I was referred in which Judges have stated that an order for sale is made for the benefit of all incumbrancers. However, on a careful reading of those judgments, the benefit identified appears to have been that those incumbrancers who came in and proved in the proceedings were entitled to be paid in accordance with their respective priorities out of the proceeds of sale (if any). I have added the words 'if any' because it seems to me that this was not being referred to as an absolute entitlement in the sense of there being an obligation on the plaintiff to proceed with the sale but, rather, that if the properties were sold pursuant to the order of the Court, then a proving incumbrancer was entitled to participate in the proceeds of sale in accordance with the respective priorities. In *Re Colclough, Re Nixon's Estate* and *Harpur v Buchanan*, at the time of the judgments, the sales had taken place and the incumbrancers had proved. Insofar as the judgments refer to the separate benefit of an order for sale stopping time running for the Statute of Limitations, it again only appears to me to relate to the incumbrancer's entitlement to prove in the proceeding and participate in the proceeds of sale. It does not appear to me that any of the authorities to which I have been referred determined that an order for sale should be considered

as enuring, for the benefit of incumbrancers, in the sense of giving them rights if the plaintiff decided not to proceed with the sale prior to the incumbrancers being invited to prove in the proceedings."

18. I see no reason to depart from the reasoning or the conclusions of Finlay Geoghegan J. in *Dormer* and I adopt her decision as being a correct statement of the law on the matter.

19. Later in her judgment at para. 36, the learned judge, having examined other authorities, and referring in particular to the decision of Monroe J. in *Re Coloe's Estate* 25 L.R. Ir. 86, has this to say:-

"Insofar as Monroe J. was expressing views about the position once an order for sale was made absolute, he would appear to be doing so *obiter* as the order in that case had not yet been made absolute. However, as with a number of judges, insofar as he states that the absolute order is made for the benefit 'of all parties', the consequence which he cites is the prevention of the Statute of Limitations running against incumbrancers 'whose charge is ultimately payable out of the funds in Court'. He is again referring to incumbrancers who come in and prove and not to the position before they do so."

20. In the present case, it seems clear on the facts that the ACC had not proved their debt after the order for sale was made. The order of the High Court of 30th November, 1987, directed that the lands be sold and an account and inquiry be taken and made in the Examiner's Office in the following terms:-

"(i) An Account of all incumbrances subsequent as well as prior to and contemporaneous with the Plaintiffs' demand

(ii) An Inquiry as to the respective priorities of all such demands <u>as shall be proved</u>." [Emphasis added]

21. It is important to note that in (ii) above, the court order required the account and inquiry to establish the priorities of all such demands "<u>as shall be proved</u>". The examiner (under O. 55 of the Rules of the Superior Courts) placed advertisements in the Irish Press (on 10th and 17th May, 1989) and in the Roscommon Herald (on 12th and 19th May, 1989). The wording of the advertisements is not unimportant:-

"…all persons claiming to be Incumbrancers…are to enter their claim at the Examiners Office … on or before the 7th day of June, 1989 and to prove such claims by Affidavit on or before the same day or in default thereof they will be peremptorily excluded from the benefit of the said Order. Every such encumbracer holding any security is required to produce same at the Examiner's Office on the 14th day of June, 1989 at 11.00 on the forenoon being the time appointed for adjudicating on the claims."

22. It is clear from this notice that failure to prove one's debt "peremptorily excluded [claimants] from the benefit of the said order". There is no evidence from the examiner's records of proof by the ACC, and the ACC has accepted that it does not have an affidavit of debt on its own files. From this, and for reasons stated hereafter, I have come to the conclusion that the debt was never proved. It is true that there are some notes on the examiner's file that a solicitor for the ACC attended at the adjudication on 14th June, 1989, and that she advised the examiner of:-

(i) the Circuit Court order for sale in favour of the ACC dated 18th March, 1987; and

(ii) the charge over Folio 35163.

23. The ruling of the examiner on that date states that the claim of the ACC Bank plc was "entered". Nowhere, however, is there any evidence in the examiner's file of the amount of the debt or of the fact that it had been proved. The fact that there are notes of the amount of the ACC's debts in their internal files hardly strengthens its case, in this regard. Neither is the fact that there was some correspondence between the ACC and the Bank of Ireland about their respective "priorities" of much assistance to the ACC in this context. Bearing in mind the examiner's file note of the ACC's interest, it is not surprising that the ruling of the examiner dated 30th January, 1990, referred to serving the parties and the ACC with the conditions of sale. But all of this is very short of "proving its debts". All it meant was that the ACC claim had been entered and there was minimal contact with the Examiner's Office thereafter.

24. Of much more significance, in my view, in trying to establish what went on and what was the ACC's mindset at that time were the efforts made by the ACC to rely on its own earlier order for sale obtained by the ACC in the Circuit Court on 18th March, 1987. An account and inquiry was not progressed by the County Registrar under this order as he felt that the existence of a later High Court order in favour of the Bank of Ireland in some way inhibited his entitlement in that regard. In these circumstances, the ACC's correspondence with the Bank of Ireland fizzled out with a letter from the ACC sent on 7th May, 1993, merely requesting the Bank of Ireland to keep it informed of further developments before the examiner.

25. It is true that the ACC corresponded periodically for the next couple of years, but these letters were largely asking for the up to date position from the Bank of Ireland. In these circumstances, it may reasonably be asked, why would the ACC take up such a weak position if it had proved its debt to the High Court examiner or if it had seriously engaged with the examiner on the issue? What it may be asked, prevented the ACC from writing directly to the examiner requesting notification of further developments in the process? The answer, it seems, as is suggested by counsel for the defendant, is that at that time the ACC decided to rely on its own Circuit Court order for sale (although the ACC's judgment from the Circuit Court covered only the arrears owed by the defendant on the loans and not the capital due) and was not too interested in getting involved in the High Court proceedings at that stage. It is also significant to note that the ACC had commenced High Court proceedings in January 1985, in respect of these debts, which it discontinued in favour of two separate Circuit Court actions which it eventually prosecuted and secured the order for sale already mentioned.

26. In any event, the Bank of Ireland (the plaintiff herein) having made a settlement with the defendant, wrote to the ACC on 2nd November, 1998, and told it then that it had no objection to the ACC making an application to take over the High Court order for sale. Whatever difficulties there may have been in progressing the Circuit Court order for sale up until then, it would seem that this letter removed all obstacles which may have prevented the ACC from applying to the High

Court up to that time. Yet, the ACC made no direct attempt to engage with the High Court order until 12th December, 2008, when it made this application which was its response to the Bank of Ireland's application in October 2008 to discharge the High Court order for sale. This eventual response was also probably due to Clarke J.'s refusal on 27th July, 2007, to dismiss the respondent's independent legal challenge to the Circuit Court order for sale made in favour of the ACC and allowing the respondent leave to amend his statement of claim in that regard.

27. From the above analysis it is clear that I am of the view *Dormer* is a correct expression of the law and, accordingly, the main argument advanced by the ACC fails. Second, it is also clear from the above that I have come to the conclusion that the ACC has not proved its debt to benefit from the High Court order for sale made in favour of the Bank of Ireland in 1987 (amended 1990). Finally, also from the above analysis, I have little doubt that the ACC did not engage with or participate in the examiner's process to such a degree that it might be excused from proving its debt. This was the second argument advanced on behalf of the ACC and no doubt it was inspired by some comments of Finlay Geoghegan J. in *Dormer*.

28. Finlay Geoghegan J. did suggest in her judgment that, even though the incumbrancer has not proven its debt, there may be exceptional circumstances where the incumbrancer has sufficiently engaged or participated in the proceedings such that it may benefit from the order for sale. At para. 43 of her judgment, the learned judge makes the following comment:-

> "43. I have considered whether there is any basis for contending that, notwithstanding the express terms of O. 33, r. 8, a person who was an incumbrancer at the date the order for sale came into effect but has not yet proved is a person to whom the rule is intended to apply. From the analysis I have made above of the position of an incumbrancer who has not yet made a claim or proved in the proceedings, there does not appear to be any basis for such a general view. There may be certain circumstances in which an incumbrancer who was already joined as a party to the proceedings or participated in some way, though has not formally proved might be considered as coming within the rule. It does not arise on the facts of this case, but I do not wish by my decision to be excluding same."

29. Bearing in mind that the ACC was not a party, had been given notice of the need to prove its debt and chose not to do so and that the level of participation in the proceedings by the ACC was of a particularly low level, I do not believe this was the kind of case Finlay Geoghegan J. had in mind when she made those comments. I do not believe that the facts before me, in this court, are such as to prompt me to accommodate the ACC within the exceptional circumstances that the learned judge was contemplating.

Delay

30. This leads me to the ACC's final argument, namely, that it is not in serious delay. I need not rehearse again, the factual background and the reasons offered by the ACC as justification for the delay. By way of summary, it seems that the ACC choose not to actively participate with the examiner in these proceedings because it had the comfort of an order for sale in respect of two judgments obtained in the Circuit Court in March 1987. Notwithstanding that these judgment mortgages only covered arrears of interest on the capital sums advanced, the ACC seemed to be satisfied with these orders for sale and did not consider too seriously proving its debt to the examiner in the High Court in the proceedings commenced by the Bank of Ireland. I have no doubt that it had issues relating to priorities with the Bank of Ireland at the time and that the County Registrar in Roscommon was reluctant to proceed with its account and inquiry because it perceived a difficulty because of the later order for sale from the High Court. It is blatantly clear, however, that on 2nd November, 1998, the Bank of Ireland clearly indicated to the ACC that it had no objection to the ACC taking over the order for sale made in favour of the Bank of Ireland in 1987/90. The letter sent by the solicitors for the Bank of Ireland to the ACC not only indicated that the Bank of Ireland had no objection to the ACC taking over the order for sale, but prompted it to do so. Referring to other proceedings initiated by Mr. Moffitt in the High Court, the solicitor acting for the Bank of Ireland stated:-

> "In those circumstances, our client agrees that it would be appropriate for ACC Bank to take over the Order for Sale."

The only caveat in that letter related to the question of the ACC's claim for costs.

31. In spite of this assurance, and indeed encouragement, the ACC did nothing to take over the Bank of Ireland's order until 12th December, 2008, some ten years later and even then it was not the prime mover. Indeed, immediately after this letter from the Bank of Ireland, the ACC began to engage once more, not with the examiner's office, but with the Roscommon County Registrar in an effort to progress the Circuit Court order for sale in preference in seeking to take over the High Court order.

32. On 13th October, 2008, the Bank of Ireland brought a notice of motion seeking to have the well charging order and the order for sale made in 1987 and amended in 1990, discharged, because it had long since settled with the defendant. It was only when this was done that the ACC filed an affidavit (December 2008) seeking to be substituted for the Bank of Ireland which matter now comes before this Court. Counsel for the defendant urges me to refuse the ACC application not only on the grounds of delay, but also on the grounds of estoppel arguing that the ACC has long chosen to rely on the Circuit Court orders for sale it had to the exclusion of any rights it may have had under the High Court order. Moreover, it is also argued that the court should not make an order in favour of the ACC where it already has an order for sale from the Circuit Court and is still intent on enforcing these orders. In an affidavit sworn on behalf of the ACC on 18th December, 2008, the deponent on behalf of the bank stated at para. 8:-

> "The said Order for Sale [i.e. the Circuit Court order] remains in force and ACC Bank Plc are seeking to enforce same."

33. There is little doubt that the court has a discretion in this matter and I need look no further than the judgment of Finlay Geoghegan J. in *Dormer*, where she indicated at para. 50 that, on the facts of that case, she was prepared to refuse the application on the grounds of delay. I too am of the view, in this case, that it would be unjust to grant the

ACC's application because of its inordinate and conscious delay in the matter.

34. At para. 25 of its written submissions, the ACC state:-

> "…the central submission on behalf of the Applicant is that an Order for Sale enures for the benefit of incumbrancers from the date on which the Order for Sale comes into effect; provided this occurs within the relevant limitation period an application by an incumbrancer to be substituted as the Plaintiff in the proceedings and enforce the order for sale is not an action or proceeding that is proscribed by the limitation provisions contained in the Statue of Limitations."

35. From my findings above, and from my decision to follow the judgment of Finlay Geoghegan J. in *Dormer,* that the order for sale enures only for the benefit of incumbrancers who have proved their debt, the premise of the ACC's argument is not sustainable, and as a result its argument that it is protected from the limitation period set out in the Statue of Limitations also falls, subject to what I am about to say next. To put it briefly, if the order for sale does not enure for the benefit of the ACC here, as I have held, then it can get no comfort in respect of limitation periods that might have been available to it, had I held that the ACC was entitled to the benefit of the order for sale. Whether it is statute barred in respect of any debts due from the defendant will be determined by factors other than those canvassed in this application. In short, the ACC can claim no shelter from the Statute of Limitations because of the order for sale made in favour of the Bank of Ireland in 1987 (and 1990). Whether there are other factors which prevented the Statute running is unlikely from the evidence before this Court, but I hesitate to be definitive on this issue as perhaps all information on this issue was not before me. Nevertheless in as much as the ACC relies on *Dormer* being wrong in law, it must fail. This too appears to be Finlay Geoghegan J.'s conclusion in *Dormer* when she says at para. 35 of her judgment:-

> "Insofar as the judgments refer to the separate benefit of an order for sale stopping time running for the Statute of Limitations, it again only appears to me to relate to the incumbrancer's entitlement to prove in the proceeding and participate in the proceeds of sale. It does not appear to me that any of the authorities to which I have been referred determined that an order for sale should be considered as enuring, for the benefit of incumbrancers, in the sense of giving them rights if the plaintiff decided not to proceed with the sale prior to the incumbrancers being invited to prove in the proceedings."

36. Of course, my decision to hold that the High Court order for sale does not enure for the benefit of the ACC, and consequently does not prevent the Statute of Limitations period from running against the ACC, does not mean that all the independent rights which the ACC has against the defendant are extinguished by this refusal. Insofar as the ACC's application to take over the Bank of Ireland proceedings here on the basis of two indentures of charge dated 21st January, 1977, and 18th December, 1979, my decision here cannot affect the ACC's independent rights under these charges. If, as the ACC allege, it has made proper and timely demands in accordance with the terms of the indentures, it may be that no question under the Statue of Limitations arise. That is not a matter which I have to concern myself with here. The effect of my refusal here is that the ACC cannot claim the benefit of the High Court order for sale made in 1987 (amended in 1990), and that the period of limitation stopped running in its favour from the date of the High Court order for sale. Whether the clock has been stopped in other causes, by other means, is not a question before this Court.

37. It is important to note that the applicant here is not making an application for a fresh order for sale provided for under O. 33, r. 8 of the Rules of the Superior Courts. That order only provides for an application by an "incumbrancer subsequent in order of priority to the demand of the plaintiff" and the ACC has consistently maintained that it has priority to the Bank of Ireland in its claims against the defendant's land. For this reason, the ACC seeks, not a new order for sale, but for an order substituting it instead of the Bank of Ireland in the old High Court order made in favour of the Bank of Ireland in 1987 (amended 1990). In doing this, the ACC hopes to avoid the language of O. 33, r. 8 which contemplates in its wording that the new order will be made in favour of an incumbrancer "subsequent in order of priority" to the plaintiff, only for payment of demands which may have been proved. The ACC also attempts to distinguish *Dormer* on the basis that it was concerned with O. 33, r. 8 of the Rules of the Superior Courts whereas in the present application, it is not seeking a new order for sale, but rather to be substituted in an existing order for sale. I am not impressed by this argument and to point out, as the ACC does, that insofar as it is a prior as opposed to a puisne incumbrancer (as mentioned in O. 33, r. 8) and that the rule only applies to where some of the property is sold, does not to my mind affect the basic proposition of law that, to benefit from an order for sale, the incumbrancer must have proved its debt.

38. At para. 24(vi) –(viii) of its submissions, the ACC also enlists as an argument, the general policy of the courts that a multiplicity of actions is to be avoided:-

> "It is respectfully submitted that the principle that other incumbrancers are entitled to benefit from an Order for Sale (and are not therefore obliged to institute separate proceedings seeking an Order for Sale) clearly accords with the general policy of the Courts to avoid multiplicity of claims…it is respectfully submitted that if incumbrancers are not entitled to rely on an Order for Sale as being for their benefit from the date of the Order, they will instead have to institute their own proceedings. The inevitable consequence is both a multiplicity of legal proceedings and a consequent increase of legal costs (which would under normal circumstances rank in equal priority to the incumbrancers' demands). Ultimately, a multiplicity of actions must be to the detriment of the debtor, who may incur significant additional costs in dealing with several actions."

39. This is indeed a strange proposition for the ACC to advance in circumstances where it discontinued High Court proceedings in 1985 before getting two separate judgments at the Circuit Court level (presumably to keep within the jurisdiction) and got an order for sale from the Circuit Court, which although it claims it still intends to enforce, it has not taken any steps in that direction and is now coming before the High Court seeking to be substituted to an order made in favour of the Bank of Ireland some twenty years ago.

40. In all of these circumstances, and for reasons outlined above, I am of the view that I should, in this case, exercise a discretion against making an order substituting the ACC for the Bank of Ireland in these proceedings so as to allow it to benefit from the order for sale made by this Court in 1987 and amended in 1990.