

THE HIGH COURT

[2015 No. 323 S.P.]

BETWEEN

ALLIED IRISH BANKS PLC

FIRST NAMED PLAINTIFF

AND

DAN MORRISSEY (IRL) LTD (IN RECEIVERSHIP)

SECOND NAMED PLAINTIFF

AND

PHILIP MORRISSEY JUNIOR AND

ALL PERSONS CONCERNED

DEFENDANT

JUDGMENT of Mr. Justice Hedigan delivered on the 17th day of December 2015

1. The plaintiffs claim an order pursuant to s. 62 (7) of the Registration of Title Act 1964 and/or pursuant to O. 3 (15) and/or (22) of the Rules of the Superior Courts for delivery up or possession of the lands described in Folio 771 and 54062F County Kildare. They also seek a declaration that the defendant has no legal and/or equitable interest in the lands in question.

The plaintiffs are respectively the AIB (the bank) and Dan Morrissey (Ireland) Ltd (in receivership) the company.

2. The plaintiffs proceed on foot of a charge in the form of a deed of mortgage dated the 27th of October 2006, a deed of mortgage dated the 4th of October 2007 and a mortgage debenture dated the 20th of August 2009. These charges were to secure facilities advanced. Upon demand being made for the monies secured thereby they became immediately repayable. The monies however remained unpaid. The company could not during any of this time part with possession of the legally mortgaged or equitably charged property or any part thereof.

3. The sums secured having remained unpaid, the bank appointed the receivers as receivers over all the assets of the company including Ballyburn House, Castledermot, County Kildare together with an adjoining seven acres of land (Ballyburn House) and another adjoining property at Ballyburn Upper currently occupied by Margaret Wright on foot of a caretaker's agreement with the plaintiffs (the adjoining property).

4. Following a period of examinership, the receivers resumed control in July 2015. The receivers have negotiated a sale of the property. They have a contract for sale dated the 3rd of March 2015. They have called upon the defendant to deliver up vacant possession of Ballyburn House and to acknowledge no interest in Ballyburn House or the adjoining property. He has failed to do so.

5. The defendant initially asserted that he occupied the property as a tenant. The plaintiffs served a termination notice dated the 30th of September 2014 to expire on the 20th of January 2015. The defendant then referred the matter to the Private Residential Tenancies Board (PRTB) and disputed the validity of the notice. He claimed his tenancy commenced in December 2007 and that it provided for twelve months notice to quit. He claimed that he was negotiating to purchase the property and adjoining farmyard from the company. He claimed he had been paying rent by way of a reduction in his wages. The PRTB determined that the termination notice was valid and there was insufficient proof of an agreement that could bind the receivers. This decision was appealed. In that appeal the defendant claimed for the first time that he had had an agreement to purchase Ballyburn House and the adjoining property. As a result of the claim to ownership, the Tenancy Tribunal held that it had no jurisdiction.

6. I have had the opportunity of reading through the papers herein including the affidavit of Conal Regan for the plaintiffs together with the exhibits thereto. On a *prima facie* basis it is clear to me that the plaintiffs have made out their case for the order and declaration sought.

7. The defendant has appealed the order of McGovern J. admitting this case to the Commercial Court. He has applied to the Legal Aid Board for legal aid to defend this case. He was directed by McGovern J. to file a replying affidavit by the 14th of December. He has failed to do so. Before McGovern J. the defendant produced a letter from the Legal Aid Board dated 20th of November 2015 indicating that it would be four months before he could have an interview with the Board to determine his eligibility in his case. He argues that he wishes to have a full hearing of his case and that he wishes to be legally aided.

8. The plaintiff's wish to have the matter resolved expeditiously because they have a buyer for the property at a price of €5,615,000. The intending purchasers will not proceed because of the defendant's claim to the property unless the plaintiffs agree to hive off that part claimed by the defendant or alternatively give them an indemnity for the full costs of resolving his claim. Neither alternative is acceptable to the plaintiffs.

9. I have considered carefully the defendant's submissions. I cannot ignore that he has failed to swear an affidavit that would verify any of the factual assertions he has made. Nonetheless I would give the time and opportunity to avail of legal aid if I could identify any realistic ground of defence in the submissions made by the plaintiff. There is in fact only one case he has raised as a possible defence. This is that he had a form of rental purchase agreement in respect of Ballyburn House. On the evidence which is actually before the court however this defence is unsustainable. The defendant himself represented to the PRTB that he was a tenant on the property. In his application form at page 8 of 12 he states that he was negotiating with the landlord to purchase Ballyburn House and the adjoining farmyard. This application and this representation are entirely at variance with his claim of a rental purchase agreement giving rise to a proprietary interest. Moreover in the letter of the 7th of April 2015 from the plaintiff company signed by Kevin

Morrissey, he states explicitly that the only agreement ever entered into with the defendant in respect of Ballyburn House was a form of caretaker arrangement. Mr. Morrissey goes on further to state that no agreement was ever sanctioned to dispose of any part of a property nor could it have been without the written consent of the bank. On this basis there is no credible defence identifiable and the court has no choice but to exceed to the plaintiff's application for the order and declaration sought.

10. The Plaintiffs request that the order should be for delivery of possession direct to the receivers. I agree this would be best in the interest of the expeditious determination of these proceedings. I will also grant a stay on execution on the order for three months from today.