THE COURT OF APPEAL

Neutral Citation Number: [2019] IECA 168

High Court Record No. 2017/1375P

Record No. 2017/149

Peart J.
Whelan J.
Costello J.

BETWEEN/

KEN TYRRELL

PLAINTIFF/

RESPONDENT

- AND–

DAMIAN GIBNEY AND IRENE GIBNEY

DEFENDANTS/

APPELLANTS

JUDGMENT delivered on the 24th day of June, 2019 by Ms. Justice Costello

1. This is an appeal against the judgment and order of Stewart J. dated 21st March, 2017 granting the plaintiff/respondent (Mr. Tyrrell) orders for possession of properties comprised in three folios and ancillary relief. Separately, she refused the defendants/appellants (Mr. Gibney, Mrs. Gibney / the appellants) reliefs they had sought on a cross-motion issued on 22nd February, 2017.

Background
2. Mr. Tyrrell brought the proceedings as the receiver appointed by Deeds of Appointment dated 26th January, 2016 to three properties owned by Mr. & Mrs. Gibney. The properties are Unit 3D, Greencastle Road, Coolock Industrial Estate, Coolock, Dublin 5; 2 Pinebrook, Trim, County Meath; and Unit 5, Trim Retail Park, Navan Road, Trim, County Meath. The properties are comprised in Folio 196773F of the County of Dublin, Folio 10863F of the County of Meath and Folio 8245L of the County of Meath ("the properties"). The appellants contested the validity of his appointment on a number of grounds and refused to cooperate with Mr. Tyrrell for a year so he instituted these proceedings and sought interlocutory injunctions against the appellants.

Order of the 21st March, 2017
3. The order recites that the Court was satisfied that there was due service of the motion on Mrs. Gibney in accordance with the terms of the order (for substituted service) dated 23rd February, 2017 and that it was appropriate to proceed with the motion notwithstanding the non-appearance of Mrs. Gibney. The order also records that the Court was satisfied that Mr. Tyrrell had been validly appointed as receiver over the lands and premises, the subject matter of the motion. The trial judge ordered the defendants and each of them, their servants or agents and all other persons having notice of the making of the order to forthwith pending the trial of the action deliver up to the plaintiff, his servants or agents possessions of the [properties] together with the key alarm codes, locks and all other security and access devices and equipment in respect of the [properties]. The defendants were also restrained from preventing impeding or obstructing the plaintiff from taking possession of or getting in and securing these [properties] and dealing with tenants in situ of the properties together with other ancillary reliefs.

Issues raised by the appellants
4. The first issue raised by the appellants relates to the service of the notice of motion upon Mrs. Gibney. The purpose of rules in relation to service is to ensure that a party has notice of an application to be made to court which may affect that party. It is to ensure that that party may then appear and be heard if they so wish at the hearing of the application. Once a party can be shown to be aware of the application and to have the papers upon which the application is to be moved, a court may be satisfied as to service. It is well established that if a party attends court in person that this cures any issues that may arise as to service. It is also well established that the court may proceed with an application in the absence of a party who may be affected by the outcome of the application once the court is satisfied that the party has been properly served with notice of the motion and the relevant papers. This may be done in accordance with the Rules of the Superior Courts or in the terms of any order authorising substituted service. It is also possible that a judge may deem good the service already actually effected on a party.

5. In this case, Mr. Gibney appeared in person at the hearing of the application and thus no issue as to service in respect of him can arise. Mrs. Gibney did not attend in court. However, on the 24th February, 2017 Gilligan J. made an order for substituted service on Mrs. Gibney of the documents by pre-paid ordinary post and by leaving the documents at Dunlever Lodge, Kildalkey Road, Trim, County Meath. That same order recited that Mr. Tyrrell's motion seeking interlocutory injunctions and the cross-motion of Mr. Gibney were to be listed on Tuesday, 21st March, 2017 and fixed a time for the further exchange of affidavits.

6. Mr. Stephen Sibbald swore an affidavit of service stating that the documents were served upon Mrs. Gibney by ordinary pre-paid

post in accordance with the order of Gilligan J.. Mr. Pat Keegan, summon server, swore an affidavit stating that he left the documents addressed to Mrs. Gibney on the ground at the front door of the address specified in the order of Gilligan J. for substituted service. In the circumstances, the trial judge, Stewart J., was satisfied as to service and I see no error in her conclusion that Mrs. Gibney had properly been served in accordance with the terms of the order of Gilligan J.. That being so, the argument based upon the allegation that the trial judge erred in proceeding with the motion in the absence of Mrs. Gibney must be rejected.

7. The second argument advanced on behalf of the appellants was that this court must adjudicate upon a motion issued by Mr. Gibney on 7th July, 2017 seeking a trial of a point of law under Ord. 25, rr. 1 and 2 of the Rules of the Superior Courts. The appellants argued that this court ought to deal with this motion before dealing with their appeal against the order of Stewart J. of 21st March, 2017.

8. The motion seeks a trial of points of law by this Court on the following grounds:-

> *"(1) The hearin (sic) case is NOT properly and/or lawfully and/or legally before the court and the respondent/plaintiff is critically and legally aware of same, and ought to be critically and legally aware of same.*
>
> *(2) A declaratory order declaring and clarifying that as a point of law the plaintiff has critically and legally failed, refused and/or neglected to inform the court of his principals (sic) acceptance of payment in full rendering the respondents (sic) position and requirement for his position, the subject matter of the herein inter alia moot and void.*
>
> *(3) A declaratory order declaring and clarifying that as a point of law and as a direct result of the respondent/plaintiff's failure, refusal and/or neglect pertaining to the critical and legal establishment of the bona fides of his appointment, inter alia, that the respondent/plaintiff has no standing whatsoever in the herein.*
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> *(4) A declaratory order declaring and clarifying that as a point of law and as a direct result of the respondent/plaintiff's failure, refusal and/or neglect pertaining to the critical and legal establishment of the bona fides of his appointment, inter alia, that the respondent/plaintiff had no legal rights and/or entitlements whatsoever to issue proceedings in the herein.*
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> *(5) A declaratory order declaring and clarifying that as a point of law and as a direct result of the respondent/plaintiff's failure, refusal and/or neglect pertaining to the critical and legal establishment of the bona fides of his appointment, inter alia, that the respondent/plaintiff had no legal rights and/or entitlements whatsoever to seek any of the reliefs sought in the herein.*
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> *(6) A declaratory order declaring and clarifying that as a point of law and as a direct result of the respondent/plaintiff's failure, refusal and/or neglect pertaining to the critical and legal establishment of the bona fides of his appointment, inter alia, that the High Court enjoyed no jurisdiction and therefore had no legal rights and/or entitlements whatsoever to grant any of the reliefs granted in the herein.*
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> *(7) A declaratory order declaring and clarifying that as a point of law and as a direct result of the respondents/plaintiffs failure, refusal and/or neglect to abide by an adhere to the rules and law(s) that are Order 40 and most notably Rules 6 and 9, inter alia, of the RSC (but not limited to same) pertaining to the critical and legal construction, drafting, swearing and taking of swore Affidavits, that the plaintiffs are factually, legally and lawfully in breach of these rules/law(s) by not adhering to and/or observing and/or respecting and by flouting and breaking the very clear rules/law(s) contained in Order 40 RSC the respondents "sworn affidavits" are legally unauthentic and moot and void and therefore inadmissible in a court of law and effectively rendering the plaintiffs motion(s), inter alia, groundless, moot and void, inter alia.*
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> *(8) A declaratory order declaring and clarifying that as a point of law there cannot ever be in law a provision whether it be a rule/section/subsection, inter alia, contained in Order 40 RSC most notably rule 15, or any other law for that matter, which allows for or permits the breaking and/or flouting of any other rule/section/subsection of Order 40 and/or any other rule and/or law, and that Order 40, Rule 15 of the RSC cannot in law permit any judge to accept unauthentic, illegal, moot and/or void sworn affidavits which are in clear breach of the rules/law(s) in any cause or matter in a proper and validly constituted court of law.*
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> *(9) A declaratory order declaring and clarifying that as a point of law there cannot ever be in law or used in law any form of "case law" which is used or relied upon by anyone pertaining to the swearing and taking of sworn affidavits which intimates and/or claims it is acceptable and/or normal practice and/or best practice, inter alia, for/of the courts and/or anyone else for that matter in a court of law to permit the use and/or acceptance of any sworn affidavit which is not in strict accordance and/or adherence with Order 40 of the RSC most notably but not limited to Rules 6 and 9 and/or the Perjury Acts and/or the Commissioners of Oaths Act and/or the Solicitors Acts, inter alia.*
>
> *(10) A declaratory order declaring and clarifying that as a point of law the purported "sworn affidavits" of the respondent/plaintiff are unauthentic and perjurious and not in accordance with the rules/law(s) pertaining to same, and therefore inadmissible in the herein."*

9. Order 25 of the Rules of the Superior Courts provides as follows:

> *"1. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.*
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> *2. If, in the opinion of the Court, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the Court may thereupon dismiss the action or make such other order therein as may be just."*

10. A trial of a preliminary issue may only be ordered where the facts are agreed or are not in dispute, or are agreed for the purposes of the trial of the preliminary issue. This is not the case here. The plenary proceedings have yet to come on to trial. If a trial of a preliminary issue is to take place, it can only be at first instance. An appellate court cannot conduct a trial. No question of this court, as an appellate court, hearing a trial on a point of law could possibly arise.

11. The declarations sought are in the nature of legal submissions rather than declaratory of the rights of the parties. Declarations

are not granted on interlocutory motions but rather at the end of plenary hearings. It is not open to this court to grant those reliefs on the motion of the appellants brought for the first time before this court.

12. For these reasons, this court must refuse the reliefs sought in the notice of motion of 7th July, 2017. However, that is not to say that the arguments raised in the notice of motion may not be considered when dealing with the substantive appeal.

The notice of appeal
13. Four points emerge from the Notice of Appeal which was delivered by the appellants representing themselves without the aid of legal assistance.

> 1. Their original borrowings from Irish Permanent plc and/or Permanent TSB were discharged by a promissory note from the People's Mortgage Protection Vehicle sent to the bank in March 2014, redeemable in 2064.
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> 2. There was no debt due by the appellants to Cheldon Property Finance DAC and therefore it was not entitled to appoint a receiver over the properties.
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> 3. Mr. Tyrrell was not validly appointed as receiver over the properties.
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> 4. The affidavits sworn by Mr. Tyrrell and on his behalf did not comply with the Rules of the Superior Courts and this Court was asked to depart from its decision in *Kearney v. Bank of Scotland plc* [2015] IECA 32.

14. In addition, in submissions to the Court the appellants strongly argued that they were entitled to see the original unredacted documents relied upon by Mr. Tyrrell in the proceedings.

Discussion
15. The decision appealed against is an interlocutory injunction granting Mr. Tyrrell possession of the properties and ancillary orders. The trial judge was not determining whether Mr. Tyrrell was validly appointed as receiver over the properties or whether the appellants were indebted to Cheldon Property Finance DAC. That will be for the trial judge when the case comes on for hearing. In simple terms, as the application was for an injunction she had to be satisfied either that the plaintiff, Mr. Tyrrell, had an arguable case for the reliefs he sought, applying the principles in *Campus Oil*, or, if he was seeking possession of land, she could apply the principles in *Maha Lingam* and require that he make out a strong case to the reliefs sought. She should then proceed to assess whether damages were an adequate remedy and the balance of convenience.

16. The court had to consider the evidence adduced to establish Mr. Tyrrell's claimed right to possession of the properties. Mr. Tyrrell exhibited a letter of approval – particulars of mortgage loan dated 16th April, 1999 issued by Irish Permanent plc ("the bank") which granted a loan facility to the appellants of IR£ 315,000. The appellants signed and formally accepted the terms of the letter of approval on the 26th May, 1999. Unit 3D, Coolock Industrial Estate, Coolock, Dublin 5 was provided as security to the bank by way of Indenture of Mortgage dated the 24th August, 1999. The mortgage was duly registered as a charge on Folio 196773F of the County of Dublin on the 12th November, 1999. On the 28th October, 2015, the charge was re-registered in the name of Cheldon Property Finance Limited on the basis that ownership of the charge had been transferred.

17. By letter of approval – particulars of mortgage loan dated the 12th January, 2004 issued in the name Permanent TSB, the trading name of Irish Life and Permanent plc, the bank granted a loan facility to the appellants in the amount of €165,000. The appellants signed and formally accepted the terms of the letter of approval on the 22nd January, 2004. 2 Pinebrook, Trim, County Meath was provided as security to the bank by way of Indenture of Mortgage dated the 15th April, 2004. The mortgage was duly registered as a burden on Folio 10863F of the County of Meath on the 30th August, 2006. The mortgage was re-registered in the name of Cheldon Property Finance Limited on the 28th October, 2015 on the basis that ownership of the charge had been transferred.

18. By letter of approval – Particulars of Mortgage Loan dated the 28th November, 2008 Permanent TSB granted a loan facility to the appellants in the amount of €552,750. The appellants signed and formally accepted the terms of the letter of approval on the 28th November, 2008. Unit 5, Trim Retail Park, Trim, County Meath was provided as security to the bank by way of Indenture of Mortgage dated the 20th April, 2011. The mortgage was duly registered as a burden on Folio 8245L of the County of Meath on the 27th April, 2011. The mortgage was re-registered in the name of Cheldon Property Finance Limited with effect from the 28th October, 2015 on the basis that the ownership of the charge had been transferred.

19. The letters of offer, their acceptance, the mortgages and the folios were all exhibited by Mr. Tyrrell and were before the High Court. The appellants did not deny that they entered into the loan agreements, that they executed the mortgages and that the monies were advanced and received by them. They did not dispute the restructure agreement dated the 4th April, 2012 between the bank and the appellants whereby the bank agreed to reduce the repayments to interest only repayments for a period of six months. The issues which the appellants raised in the High Court and on appeal date from 2013 onwards.

20. The first issue raised on appeal was whether the debt was due or had been repaid. Mr. Gibney asserted in an affidavit sworn on the 22nd February, 2017 that since October 2013 the appellants' loans were owned by Peoples Mortgage Protection Vehicle (PMPV) though he did not explain how this had occurred. He further asserted that *"in or around March 2014 by way of promissory note which the original "bank" accepted and same promissory note being redeemable in 2064"* and that the loans had thereby been repaid.

21. He exhibited no documentation to support this bare assertion and, in particular no promissory note was adduced in evidence before the court. He said that the bank received *"and accepted"* the promissory note from the PMPV on the basis of a copy of a document he received pursuant to a data request issued under the Data Protection Acts. The document appears to be a copy of a screen shot of a computer record maintained by the bank. He does not explain what it is. In the 'comments' box on the screen shot, the following is noted:-

> *"From PMPV on behalf of the borrowers enclosing a promissory note as full payment of the loan…will need to discuss this with Linda Lawless…Karla Keogh."*

22. In my opinion, the trial judge was correct in concluding that this did not amount to evidence that a valid promissory note had been duly tendered or that it was accepted by the bank in discharge of the liabilities of the appellants. On the contrary, in its terms, the note records that the bank had received such a document and that the sender alleged that it repaid the loan and officials are to discuss the matter. The appellants argued that the failure of the bank to return the "promissory note", or to deny that it was accepting it as satisfaction of the debt, amounted to acceptance of the note as satisfaction of the debt. This submission is unstateable and without merit. It follows that the argument that the trial judge erred in law in granting the orders, the subject of this

appeal, on the basis that, in fact, no monies were due and owing on foot of the loans by reason of the fact that they had been paid off by way of a promissory note in March, 2014 is without merit and must be rejected.

23. The second ground advanced by the appellants in the notice of appeal was that no debt was due to Cheldon Property Finance Limited and it was not the owner of the mortgages. That being so, it had no right to appoint a receiver over the properties. Mr. Tyrrell points to the fact that the three charges registered on the three folios have each been reregistered in the name of Cheldon Property Finance Limited. By virtue of the provisions of s.31 of the Registration of Title Act 1964, the register is conclusive and it is therefore established that it is the owner of the charges on the folios which were exhibited by Mr. Tyrrell. This submission is correct but it applies only to the ownership of the securities, not to the loans. Mr. Tyrrell must also establish an arguable case that Cheldon Property Finance Limited was the owner of the loans when it demanded repayment of the loans and appointed Mr. Tyrrell receiver over the properties.

24. By a mortgage sale agreement dated the 8th July, 2015 Permanent TSB plc sold and Cheldon Property Finance Limited bought certain assets as set out in the mortgage sale agreement. The appellants argued vociferously that they were entitled to see the original unredacted version of this document. Mr. Tyrrell averred in para. 38 of his affidavit sworn on the 14th February, 2017 that pursuant to the mortgage sale agreement Cheldon Property Finance Limited acquired all the rights of the bank on foot of the loan facilities and the mortgages. He exhibited a true copy of the mortgage sale agreement *"which has been redacted to preserve the confidentiality of matters which are not relevant to the within proceedings."* At the hearing of the appeal before this court, counsel for Mr. Tyrrell was able to show that, in fact, the loans of Mr. & Mrs. Gibney and the associated securities, the mortgages, formed part of the assets which the bank agreed to sell and Cheldon Property Finance Limited agreed to purchase by reference to the unredacted portions of the deed exhibited by Mr. Tyrrell. Clause 2.1 of the deed provided:-

> *"Subject to the terms and conditions of this Agreement and subject to the subsisting rights of redemption of the Obligors, the Seller agrees to, absolutely and unconditionally sell, and the Buyer agrees to purchase all its right, title, interest and benefit (whether past, present or future) in, to and under the Mortgage Assets, the Underlying Loans and the Finance Documents and including the Seller's right, title and interest in and to the Ancillary Rights and Claims, on the Completion Date on the terms of and as provided in the Transfer Documents."*

There was evidence that the sale was completed and so, subject to what is set out in para. 25, I am therefore satisfied that Mr. Tyrrell has established a strong, arguable case that the loans and associated securities, including the mortgages, were agreed to be sold and subsequently were sold to Cheldon Property Finance Limited. This is what he was required to do for the purposes of obtaining the relief he sought from the High Court by way of interlocutory injunctions granting possession of the charged properties. It will be a matter for the High Court when the matter comes on for trial to determine whether in fact the loans and the mortgages were assigned and transferred under the provisions of the agreement of the 8th July, 2015 as he asserts.

25. The copy of the mortgage sale agreement is 113 pages long, excluding the excel spreadsheet schedules setting out the properties, connections and connection IDs comprised in the sale. It has internal pagination on the bottom of each page. It is apparent that an error occurred in photocopying the document in that pages 111 and 112 were omitted. Page 113 comprises the execution page for Cheldon Property Finance Limited and is on the face of it validly executed by authorised signatories for the buyer. The execution page on behalf of the seller, the bank, was on page 112 and was omitted. This court noted this omission and the solicitor for Mr. Tyrrell furnished a copy of the omitted pages which the court agreed to receive as part of the documents of the case. I am satisfied that Mr. Tyrrell has therefore established a strong arguable case that the agreement was executed by the bank and, therefore, that the loans and the associated securities of the appellants were assigned and transferred to Cheldon Property Finance Limited.

26. I am therefore satisfied that this second ground of appeal must fail as Mr. Tyrrell had established in the evidence before the High Court that he had a strong arguable case entitling him to the relief he sought.

27. Thirdly, the appellants assert that Mr. Tyrrell has not been validly appointed receiver over the properties. In his grounding affidavit Mr. Tyrrell exhibited the demand letter from Cheldon Property Finance Limited to Mrs. Gibney on the 6th January, 2016 and Mr. Gibney on the 12th January, 2016 demanding payment of the sum of €1,008,191.96. Mrs. Gibney was called upon to pay the sum by 5 p.m. on the 8th January, 2016 and Mr. Gibney by 5 p.m. on the 15th January, 2016. Each letter expressly reserved to Cheldon Finance Property Limited the right to appoint a receiver over the assets securing the loans and/or to institute legal proceedings to recover the debt due at the earliest opportunity.

28. As the loans, in fact, were not repaid pursuant to the letters of demand, by two deeds of appointment issued on the 19th January, 2016 and accepted by Mr. Tyrrell on the 26th January, 2016 he was appointed receiver over the properties. In the premises, the trial judge was entitled to conclude that he had established a strong case that he was validly appointed receiver over the properties by the charge holder registered on the folios where a demand of more than €1m had been made and not repaid. Therefore, this ground of appeal must fail.

29. The fourth ground of appeal was based upon the assertion that the affidavits before the court sworn by Mr. Tyrrell and Mrs. McCrave, Director of Cheldon Property Finance DAC, did not comply with the provisions of the Rules of the Superior Courts as they did not comply with the provisions of Ord. 40, rr. 6 and 9. It was argued that the deponent is required to give his or her residence in order to comply with the rule which says a deponent must give his or her *"abode"* and to state the time of day, not merely the date, upon which the affidavit was sworn. On that basis, the trial judge ought to have excluded all of the affidavits and dismissed the application.

30. This Court has held in the case of *Kearney v. Bank of Scotland* [2015] IECA 32 and on many other occasions since that, the Rules of the Superior Courts do not require that a deponent, who gives their place of business as their address, should state their residence or state the precise time of day, as opposed to the date, upon which the affidavit was sworn. The appellants are fully aware of the decisions of this court as they have requested in their notice of appeal that this court should depart from its decision in *Kearney*. However, no good reasons have been advanced as to why the court should do so and I reject this ground of appeal also. The law is well settled to the knowledge of the appellants and this point is utterly without merit.

31. The appeal commenced on the 22nd January, 2019 but it did not complete on that day and the hearing resumed on the 30th May, 2019. In the intervening period Mr. Gibney swore a further affidavit and raised three new points which had not been argued before the High Court. No explanation was advanced as to why the arguments were not presented to the High Court, nor was it suggested that Mr. Gibney would not have been in a position to advance the argument in the High Court at the hearing before Stewart J.. On that basis, they are not properly before the Court and cannot constitute a grounds of appeal for setting aside the order of the High Court.

32. Notwithstanding this conclusion, I should point out that the three new points have no basis in law and could not constitute valid grounds of appeal in this case. The first argument is based upon the fact that Cheldon Property Finance Limited converted to Cheldon Property Finance DAC on the 19th September, 2016 and a certificate of incorporation on conversion to a DAC is exhibited. Nothing turns upon this. The company which was formerly a limited company continues now as a designated activity company. It was required to convert to a DAC by reason of the coming into force of certain provisions of the Companies Act 2014. It has no impact whatsoever on the rights of Cheldon Property Finance Limited, now Cheldon Property Finance DAC, nor of Mr. Tyrrell as the receiver appointed by Cheldon Property Finance Limited prior to the reregistration of the company. There was no abeyance of title.

33. Mr. Gibney exhibits a cession of business name in respect of Permanent TSB dated the 7th November, 2005. This is of no relevance to this case. Permanent TSB was the business name of Irish Life and Permanent plc. It was Irish Life and Permanent plc who was the registered charge holder on the three folios and it is Permanent TSB plc, the successor to Irish Life and Permanent plc, who assigned and transferred the loans and mortgages of the appellants to Cheldon Property Finance Limited.

34. The final argument raised was based upon a response dated 30th June, 2015 to a data access request made by Mr. Gibney to Permanent TSB. The letter confirms that certain mortgage accounts had not been securitised but also confirms that two accounts were securitised on 14th December, 2007 and that the securitisation vehicle was Fastnet 3. The letter states that it is not possible to say how much was paid to the bank for his individual loan as the securitisation encompassed many loans across the bank's loan book. On the basis of this letter, the appellants argue that their loans could not have been sold to Cheldon Property Finance Limited in 2015 and accordingly neither it, nor Mr. Tyrrell, have any right to seek to recover any sums from them.

35. The argument is without merit. Firstly, it is apparent from the letters of loan offer exhibited by Mr. Tyrrell that the first and third loans have not been securitised. The data access letter, therefore, could only ever be relevant to the second loan. The letters of demand of January 2016 show that the redemption figure of the 6th January, 2016 in respect of this second loan came to €131,980.74 with a daily accrual rate of €5.06. The mortgage granted in respect of this loan (as indeed of all of the loans) is an "all sums due" mortgage. Therefore, even if the appellants could argue that this loan had not been assigned to Cheldon Property Finance Limited, nonetheless all three properties were provided as security in respect of the monies due in respect of the other loans. Therefore, even if the appellants were correct in their submission based upon the letter of 30th June, 2015, it does not alter the entitlement of Cheldon Property Finance Limited to appoint a receiver over the properties based on the sums due on the other two, non-securitised loans or the validity of Mr. Tyrrell's appointment.

36. More fundamentally, even if this letter could be said to establish that the loan had been part of the securitisation called Fastnet 3 – and it does not – that, in and of itself, proves nothing. It would be necessary to adduce evidence of the terms of the securitisation in question to ascertain whether or not the bank remained free to dispose of the loans and associated mortgages, including the appellants' loan. Secondly, it would be necessary to ascertain whether the loan remained securitised to Fastnet 3 in 2015. Simply put, the fact that one of the loan may have been securitised in 2007 – there is no indication that this remained so – this did not conclusively determine the alleged inability of Permanent TSB plc to sell that loan to Cheldon Property Finance Limited.

Conclusion

37. Mr. Tyrrell made out a strong case in the High Court that these three commercial loans secured on two commercial units and one residential buy-to-let unit were owned by Cheldon Property Finance Limited and were in arrears and that he had been validly appointed as receiver over the properties. No arguments were advanced to dispute his submission that damages were not an adequate remedy in the circumstances of the case or that the balance of convenience favoured granting the reliefs he sought. There was undisputed evidence that the appellants were either withholding rent in respect of the units or that they were unoccupied and that the appellants were obstructing and not co-operating with the receivership for a period of a year.

38. The trial judge was entitled, therefore, to grant the interlocutory orders she did and the appellants have failed to raise any grounds on appeal why this Court should interfere with the order. For these reasons I dismiss the appeal and affirm the order of the High Court.