

THE HIGH COURT

CIRCUIT APPEAL

[2014 No. 22 CA]

BETWEEN

PATRICK CRONIN

APPELLANT

-AND-

TANAGER LIMITED

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 29th day of February, 2016.

1. This is an appeal by Mr. Patrick Cronin against the order of the Circuit Court dated 28th January, 2014, for possession of Mr. Cronin's family home at 9 Edward Lane, Edward Square, Bloomfield Avenue, Donnybrook, Dublin 4, which was granted to Bank of Scotland PLC.
2. On 23rd June, 2014 by order of Peart J. the title of the proceedings were amended so as to disclose the plaintiff as Tanager Limited. I note, from my review of the papers, that the order of Peart J. refers to Tanager Limited as the plaintiff / appellant rather than as the plaintiff / respondent but I do not believe anything turns on this point.
3. In his affidavit of 17th January, 2014, Deven Keshwala on behalf of the plaintiff, outlines in detail the various letters, telephone calls and meetings between the bank and Mr. Cronin during the period 9th November, 2010, and July, 2013 with a view to the bank complying with its obligations under the Code of Conduct on Mortgage Arrears and the Mortgage Arrears Resolution Process. During this period no substantive proposals were made by Mr. Cronin and none of the letters, telephone calls or meetings which took place have been denied on the part of Mr. Cronin.
4. Mr. Cronin's case on the other hand relies primarily on the fact that at the time of the Circuit Court proceedings he was not legally represented and as a result of his lack of legal training he ended up not attending the Circuit Court hearing. His counsel has made the case that if he was legally represented at that time he would have made substantive proposals to meet his debt obligations. Indeed, he did make substantive proposals on 25th February, 2016, which were exhibited in his affidavit of that date and which provide for the repayment of his debt over a seventeen year period. The affidavit was not correctly filed or stamped but counsel for Tanager Limited did not make an issue in relation to it.
5. In addition, counsel for Mr. Cronin has pointed out that he commenced making repayments in October of 2014 to his loan and I understand that the amount repaid is in excess of €30,000 since then. Thus, Mr. Cronin is relying in this appeal on two main points: that he was not legally represented at the Circuit Court hearing and that his actions since that day justify the making of the order in this case.
6. If I were to overturn the Circuit Court decision on this basis it would, in my opinion, be granting lay litigants an advantage over parties who choose to employ legal representation. They could approach litigation on the basis that if the result did not go their way, they could rely on their absence of legal representation to have the decision overturned ultimately to the cost of the other side, who have legal representation. In addition, in a case such as this, it would mean that somebody in Mr. Cronin's position could rely on his actions after the Circuit Court order to have that order overturned. In this sense, a lay litigant in a case such this, would be able to benefit from his position as a lay litigant by introducing loan repayments and loan reschedule proposals, all of which occurred some two years after the time when they should or might have occurred.
7. For the above reasons, I affirm the order of the Circuit Court and its order as to costs.
8. However, I am cognisant of the €30,000 approximately which Mr. Cronin has paid since the order for possession was granted by the Circuit Court. In many cases of this nature, persons in Mr. Cronin's position would make no attempt at repayment. I am also cognisant of Mr. Cronin's proposed repayment schedule over a 17 year period, which appears to be a genuine repayment schedule, albeit that it has been proposed rather late in the day. However, it does appear to me that this does offer Tanager Limited a realistic way to resolve this matter without having to sell the property were they so minded. In recognition of this fact, I make no order as to costs in relation to this High Court hearing.