Neutral Citation: [2013] IEHC 354

THE HIGH COURT

[2013 No. 4620P]

BETWEEN

GEORGE MALONEY

PLAINTIFF

AND

PAUL O'SHEA AND CANNON AGRI LIMITED

DEFENDANTS

Judgment of Ms. Justice Laffoy delivered on 19th day of July, 2013.

The proceedings and the application

1. The plaintiff in these proceedings is a receiver appointed by Danske Bank A/S trading as National Irish Bank (the Bank) over part of the lands registered on Folio 976 of the Register of Freeholders County Kildare, which were charged by the first defendant (Mr. O'Shea) in favour of the Bank. The second defendant (the Company) is a company which is effectively owned by Mr. O'Shea and to which he granted a lease over part of the lands registered on Folio 976 of the Register of Freeholders County Kildare in 2011.

2. The proceedings were initiated by a plenary summons which issued on 8th May, 2013 in which the first relief sought by the plaintiff is an order granting the plaintiff possession of the property over which he was appointed receiver by the Bank, being part of the lands registered on Folio 976, which will be referred to as "the Receivership Property". Various other reliefs are sought, including damages.

3. The application to which this judgment relates is an application for interlocutory injunctive relief which was initiated on the same day as the plenary summons issued, in which the plaintiff seeks orders –

> (a) prohibiting the defendants from impeding and/or obstructing the plaintiff from taking possession of the Receivership Property;
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> (b) prohibiting the defendants from impeding and/or obstructing the plaintiff in securing the Receivership Property;
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> (c) prohibiting the defendants from actually or implicitly harassing, intimidating, threatening or interfering with the plaintiff or his staff or the staff of the estate agent retained by the plaintiff;
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> (d) prohibiting the defendants from telephoning, attending at or otherwise contacting the private residences of the plaintiff or his staff or the staff of the estate agent;
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> (e) prohibiting the defendants from trespassing or entering upon or otherwise interfering with the Receivership Property;
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> (f) directing the defendants to deliver up to the plaintiff forthwith any keys, alarm codes and/or other security and access devices in respect of the Receivership Property;
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> (g) prohibiting the defendants from purporting to collect rents or other payments in respect of the Receivership Property or holding themselves out as the party entitled to let the Receivership Property; and
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> (h) directing the defendants to disclose full details of, and to provide copies of, all documents pertaining to their "purported legal relationship" to the extent that it affects or concerns the Receivership Property.

As regards the reliefs sought at paras. (c) and (d) above, it is the case that, before these proceedings were initiated, events occurred involving Mr. O'Shea and, apparently, persons with whom he was associated at the time, which justified the plaintiff seeking those reliefs. However, when the matter was first before the Court on 14th May, 2013, Mr. O'Shea gave undertakings to the Court in the terms of those reliefs and the undertakings have been continued. It is accepted by the plaintiff that Mr. O'Shea has complied with the undertakings he gave the Court. As regards the relief set out at (h) above, as I understand it, the concern of the plaintiff was to ascertain details of the landlord and tenant relationship between Mr. O'Shea and the Company. The relevant documents have been exhibited by Mr. O'Shea in his replying affidavits sworn on 28th May, 2013 and 20th June, 2013. It was accepted by counsel for the plaintiff that that relief has been overtaken by events. The position of the plaintiff is that the Bank is not bound by the lease granted by Mr. O'Shea to the Company. Therefore, it seems to me that the relief sought at para. (g) is of no relevance. Accordingly, the focus of this judgment will be on the reliefs outlined at (a), (b), (e) and (f) above.

4. Mr. O'Shea was accompanied at the hearing of the application by a McKenzie friend, who addressed the Court on his behalf in an appropriate manner. Although, on the authority of the decision of the Supreme Court in *Battle v. Irish Art Promotions Centre Limited* [1968] I.R. 252, neither Mr. O'Shea nor his McKenzie friend was entitled to represent the Company, the reality of the situation is that the arguments advanced on behalf of Mr. O'Shea in support of his contention that the Court should dismiss the plaintiff's application addressed the position of the Company as well as that of Mr. O'Shea. I am satisfied that it is possible to determine the status of the Company vis-à-vis the Bank and the plaintiff without in any real sense "lifting the corporate veil".

5. The arguments advanced by and on behalf of Mr. O'Shea in resisting the application for interlocutory relief were all of a technical nature. I propose considering them in the course of outlining the relevant aspects of the contractual relationship of Mr. O'Shea with the Bank and the plaintiff's position as receiver arising from that relationship.

Folio 976 County Kildare

6. Folio 976 comprises land in the townland of Davidstown Upper in County Kildare containing 36.0322 hectares. On 24th December, 2001, Mr. O'Shea was registered as full owner of the said lands. On 4th February, 2010 a charge for present and future advances was

registered as a burden on the folio and the Bank, which was named as "Danske Bank A/S" on the folio, was registered as owner of the charge. From a comparison of the dealing number on the folio in relation to that charge with the dealing number endorsed on its back sheet, I am satisfied that it is the charge relied on by the plaintiff in this case, which was created by a deed of mortgage dated 15th October, 2003 made between Mr. O'Shea of the one part and National Irish Bank Limited of the other part (the Charge). The only other entry of relevance on Folio 976 is that a lease dated 14th October, 2011 from Mr. O'Shea to the Company (the Lease) of part of the property registered on the folio was registered as a burden on Folio 976 on 30th November, 2011 and it was stated that the title to the leasehold interest created by the Lease was registered on Folio KE 9881L.

The Charge

7. By virtue of the Charge Mr. O'Shea charged all the lands comprised in Folio 976 in favour of National Irish Bank Limited to secure present and future advances. Mr. O'Shea emphasised the fact that at the commencement of the Charge his address was given as "Davidstown, Castledermot, County Carlow", when, in fact, he lives in County Kildare. The misstatement of Mr. O'Shea's address at the commencement of the Charge does not affect its validity.

8. The provisions of the Charge which are of relevance for present purposes are the following:

> (a) Clause 6(2) incorporates certain statutory provisions into the Charge. It provides that the power of appointing a Receiver conferred on mortgagees by the Conveyancing and Law of Property Act 1881 (the Act of 1881) shall apply to the Charge with variations which are not in issue for present purposes. Mr. O'Shea made the point that the Bank did not have power to appoint a receiver over part only of the charged property. That contention is not correct. There is written into the Charge the power on the part of the Bank to appoint a receiver contained in s. 19(1)(iii) of the Act of 1881, which expressly provides for the appointment of a receiver over mortgaged property or any part thereof. Further, Clause 6(3) expressly confers on a receiver appointed by the Bank the power "to enter upon and take possession of the mortgaged property or any part thereof".
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> (b) Clause 6(6) provides as follows:
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> > "That the mortgagor shall not except with the written consent of the Bank grant or agree to grant any lease or tenancy of the mortgaged property or any part or parts thereof or part with possession thereof or accept or agree to accept a surrender of any lease or any tenancy thereof and Sub-section (1) of Section 18 of the Conveyancing and Law of Property Act 1881 shall not apply to this security".

I will return to that provision later.

Transfer from National Irish Bank Ltd. to Danske Bank A/S

9. By virtue of Central Bank Act 1971 (Approval of Scheme of National Irish Bank Limited and Danske Bank A/S) Order 2007 (S.I. No. 29 of 2007) the Minister for Finance approved a scheme for transfer of the banking business of National Irish Bank Limited to Danske Bank A/S. The Order provided, *inter alia*, that on and from 1st April, 2007 the assets and liabilities in relation to the business would be transferred to and vested in Danske Bank A/S.

10. For whatever reason, the Charge, which was created in October 2003, was apparently not lodged with the Property Registration Authority (PRA) for registration until 2010. By that stage, the interest of National Irish Bank Limited as chargee under the Charge had vested in Danske Bank A/S. The requirements of the PRA in relation to producing evidence as to the ownership of the Charge were obviously considered to have been complied with and the PRA registered Danske Bank A/S as the owner of the Charge. In this connection it is a matter of public knowledge that a copy of the Agreement for Transfer of Banking Business dated 30th November, 2006 and S.I. No. 29 of 2007 were filed with the PRA. This is set out in what is described as "National Irish Bank Limited to Danske Bank A/S Legal Office Notice 4 of 2013" which is posted on the PRA website and which states as follows:

> "With effect from 1st April, 2007, by order of the Minister for Finance . . . entitled '. . . (S.I. No. 29 of 2007)', National Irish Bank Limited transferred its business to Danske Bank A/S. Charges registered in the name of National Irish Bank Limited are included in the transfer. Such a transfer operates as if it were a deed registered in the Registry of Deeds or in the Land Registry on the date on which it took effect. Section 36 of the Central Bank Act 1971 refers.
>
> . . . All registrations effected on or after 1st April, 2007 will be in the name of Danske Bank A/S."

11. By virtue of s. 31(1) of the Registration of Title Act 1964 the register (i.e. Folio 976 in this case) is conclusive evidence of the title of Danske Bank A/S as the owner of the Charge. While the fact that the Bank is referred to in various documentation produced by the Bank as "Danske Bank A/S trading as National Irish Bank" may have given rise to Mr. O'Shea's belief that National Irish Bank Limited and National Irish Bank are two different companies and Danske Bank A/S is not the owner of the Charge in succession to National Irish Bank Limited, that belief is erroneous.

Summary proceedings

12. In June 2012 the Bank initiated summary proceedings against Mr. O'Shea in the High Court (Record No. 2012/2388S)(the Summary Proceedings). By order of the High Court (Cross J.) made on 4th March, 2013, the Bank was given judgment in the sum of €1,296,114.47 and costs against Mr. O'Shea. Mr. O'Shea has appealed that order to the Supreme Court and the appeal is still pending.

Appointment of plaintiff as receiver

13. The document by virtue of which the plaintiff was appointed receiver was executed on 5th September, 2012 and will be referred to as the "Appointment Document". It recited the Charge and the fact that it had become vested in the Bank by virtue of the scheme approved under S.I. No. 29 of 2007. The operative part provided as follows:

> "We, Danske Bank A/S trading as National Irish Bank, do hereby appoint George Maloney . . . to be receiver of the assets referred to, comprised in and charged by the [Charge], which assets are more particularly described in the schedule hereto and to enter upon and take possession of the said assets in the manner specified in the [Charge] and such receiver shall be entitled to exercise all the powers conferred on him by the Mortgage and by law. It is noted that the receiver shall, without prejudice to the extent of his powers as aforesaid, be agent of [Mr. O'Shea] and insofar as is necessary, shall be attorney of [Mr. O'Shea] and [Mr. O'Shea] alone shall be responsible for his acts."

The property described in the schedule to the Appointment Document was described as part of the lands registered on Folio 976

comprising approximately 31.5149 hectares as shown outlined in red on the map attached thereto but excluding the portion outlined in black and coloured yellow. In other words, the plaintiff was appointed receiver over the lands registered on Folio 976 excluding an area comprising approximately 4.5 hectares. The property over which he was appointed comprises, as I understand it, two fields comprising 77.87 acres, which are used for tillage and are non-residential.

14. The execution of the Appointment Document appointing the plaintiff as receiver was effected on 5th September, 2012 at ten o'clock in the forenoon. Execution was by signing and delivery by two individuals, Keith Waine and Graham Jenkinson. Beneath their signatures there is a statement in the following terms:

> "Acting together as a duly authorised attorney of Danske Bank A/S trading as National Irish Bank."

The plaintiff signified acceptance of the appointment by signing the document at 3.30pm on the afternoon of 5th September, 2012.

15. An issue has been raised by Mr. O'Shea as to the proper execution of the Appointment Document appointing the plaintiff as receiver and, in essence, his argument is that it was not properly executed by or on behalf of the Bank and is of no effect.

16. The manner in which the Appointment Document was executed on behalf of the Bank is explained in the affidavits filed on behalf of the plaintiff. The plaintiff in his second affidavit sworn on 4th June, 2013 has exhibited a certified copy of the Articles of Association of the Bank, which is a company incorporated in accordance with the law of Denmark. Article 20 deals with "Signing power" and provides as folows:

> "20.1 Danske Bank is bound by the signatures of the whole Board of Directors, by the joint signatures of the Chairman and a Vice Chairman of the Board of Directors, by the signature of one of these jointly with that of a member of the Executive Board, or by the joint signatures of two members of the Executive Board.
>
> 20.2 The Executive Board may grant mandates or powers of attorney to any employee of Danske Bank."

17. The plaintiff has established that the Appointment Document appointing the plaintiff as receiver was executed in accordance with the requirements of the Articles of Association and the law of Denmark by producing certified copies of the following documents:

(a) A power of attorney dated 21st March, 2007 given by the Bank to Andrew Healy, General Manager, and Kevin Gallen, Deputy General Manager, authorising them, *inter alia*, –

> "To appoint and authorise additional attorneys to act jointly, any two together, on behalf of Danske Bank A/S, Ireland Branch, also trading under the name of National Irish Bank and NIB, in all transactions relating to our Ireland Branch"

That power of attorney was signed on behalf of the Bank by the Chairman of the Executive Board and the Deputy Chairman of the Executive Board who subscribed their joint signatures. Accordingly, it was properly executed in accordance with Article 20.1 of the Articles of Association of the Bank.

(b) A power of attorney dated 28th March, 2007 given by Andrew Healy and Kevin Gallen as lawful attorneys of the Bank, wherein, having referred to the power of attorney at (a) above, it was provided as follows:

> "Acting together, we hereby appoint any two members of the Executive Committee of the Branch acting jointly, and any member of the Executive Committee of the Branch and any Branch solicitor acting jointly, to be the lawful attorneys of Danske Bank A/S, acting through its Irish branch (the "Branch"), to execute agreements and other contractual documents (under hand or as a Deed) on behalf of the Branch."

That power of attorney was signed by Andrew Healy and Kevin Gallen.

18. The persons who signed the Appointment Document appointing the plaintiff as receiver on behalf of the Bank and their respective roles in relation to the Bank are explained in an affidavit sworn by Rachel Keane, an in-house solicitor with the Bank, on 24th June, 2013, in which she corrected an erroneous averment in the plaintiff's second affidavit. Mr. Waine was a member of the Executive Committee when the document was executed on 5th September, 2012. Mr. Jenkinson was a Branch solicitor. Ms. Keane has exhibited a certificate furnished by Leonard Lavelle, Head of Legal Non-Core with the Bank, confirming that the powers of attorney dated respectively 21st March, 2007 and 28th March, 2007 were in force on 5th September, 2012, that Mr. Waine was and is a member of the Executive Committee, and that Mr. Jenkinson was and is a Branch solicitor.

19. I am satisfied that the foregoing documentation establishes that the Appointment Document appointing the plaintiff as receiver was properly executed on behalf of the Bank. The appointment did not have to be made by deed; it was sufficient that it was in writing, because of the incorporation by reference of s. 24(1) of the Act of 1881 in the Charge. If it had to be by deed, which was not the case, then, the Bank being a foreign body corporate, it would have required to be executed in accordance with the legal requirements governing execution in the jurisdiction in which it was incorporated, that is to say, Denmark, by virtue of s. 64(2)(b)(iv) of the Land and Conveyancing Law Reform Act 2009 (the Act of 2009).

20. Mr. O'Shea also raised issues about the fact that the plaintiff as receiver was expressed in the Appointment Document to be the agent of Mr. O'Shea and to be his attorney, insofar as is necessary. By virtue of s. 24(2) of the Act of 1881 the plaintiff, as receiver, is deemed to be the agent of Mr. O'Shea as the mortgagor and chargor. Clause 6(3)(ii) of the Charge confers on a receiver appointed by the Bank on a sale of the mortgaged property power "to convey the same in the name and on behalf of the Mortgagor". The provision in the Appointment Document must be interpreted and applied in the light of s. 24(2) and Clause 6(3)(ii).

21. Finally, in relation to the Appointment Document appointing the plaintiff as receiver, it also incorrectly gave the plaintiff's address as "Davidstown, Castledermot, County Carlow". As is the case with the Charge, that error does not affect the validity of the appointment of the receiver.

Action taken by plaintiff as receiver/relevance of Code of Conduct

22. By letter dated 5th September, 2012 from his accountancy firm, Baker, Tilly, Ryan, Glennon, the plaintiff informed Mr. O'Shea of his appointment as receiver, referring to Mr. O'Shea's Charge as being in favour of "National Irish Bank". The Charge was, in fact, in favour of National Irish Bank Limited and by 5th September, 2012 it was vested in Danske Bank A/S. However, the inaccuracy in the letter of 5th September, 2012 is irrelevant. For a period after the appointment of the plaintiff as receiver, Mr. O'Shea was endeavouring to come to an accommodation with the Bank. However, that did not work out.

23. After the Bank obtained judgment in the Summary Proceedings, the plaintiff took steps to take possession of the Receivership

Property unsuccessfully. He then instructed Kennedys, Solicitors, who by letter dated 2nd May, 2013 threatened injunctive proceedings, if Mr. O'Shea did not vacate the Receivership Property and undertake not to impede the plaintiff in the conduct of the receivership.

24. The plaintiff followed through on the threat and initiated these proceedings and this application. Mr. O'Shea has opposed the application, *inter alia*, on the ground of alleged non-compliance by the Bank and the plaintiff with the Code of Conduct on Mortgage Arrears of the Central Bank. As I have already recorded, the Receivership Property comprises two fields and is non-residential. Therefore, that Code has no application.

The Lease

25. The Lease created a demise in favour of the Company of most of the land registered on Folio 976. Although the copy maps in relation to Folio 976, the Appointment Document and the Lease put before the Court are not coloured in conformity with the originals, it would appear that the Lease included a greater area than the Receivership Property. In any event, the Lease, which seems to follow a standard form of lease for agricultural land, created a demise for the term of twenty four years from 14th October, 2011 and it reserved a yearly rent of €35,000. Stamp duty on the Lease was discharged on 18th November, 2011 and it was lodged for registration in the Land Registry on 30th November, 2011.

26. In his first replying affidavit sworn on 28th May, 2013, Mr. O'Shea averred that the Company was formed and the Lease was granted "for tax reasons and on the advice of his accountant". In fact, the Company was incorporated on 14th October, 2011. In his second replying affidavit sworn on 20th June, 2013, Mr. O'Shea has exhibited a letter dated 19th June, 2013 from Donohoe Flanagan Reddy & Co., Chartered Certified Accountants & Registered Auditors, who have confirmed that they have prepared accounts for the Company up to 31st December, 2012 and that they have submitted corporation tax returns to the Revenue Commissioners for the period up to 31st December, 2012 and that they have submitted abridged accounts to the Companies Registration Office. They also stated as follows:

> "It is prudent that a business such as that of Cannon Agri Limited be traded through a limited company for tax purposes and Paul O'Shea, Company Director and shareholder, would have been advised of this."

I am satisfied that the foregoing explanation of the objective for the incorporation of the Company to carry on Mr. O'Shea's business and of the creation of the Lease in favour of the Company is wholly plausible.

27. The core issue in relation to the Lease is its status vis-à-vis the Bank and the plaintiff, given that, as deposed to in the first affidavit of Rachel Keane, which was sworn on 8th May, 2013, the Bank was not made aware of the creation of the Lease in favour of the Company nor was its consent ever sought either before or after its creation and the Bank has not given consent to the creation of the Lease.

28. This Court has had occasion recently to consider the position of lessees under leases created by a mortgagor without the necessary consent of the mortgagee *in McCann v. Morrissey & Ors.* [2013] IEHC 288. With the objective, hopefully, of explaining the position to Mr. O'Shea and his McKenzie friend, I propose reiterating what I said in the judgment in that case, which also concerned an application by a receiver for interlocutory relief in relation to the leased property as against the mortgagor and the lessees.

29. The first point to be made is that the leasing powers of Mr. O'Shea, in his capacity as chargor under the Charge, are governed by the law in force prior to the commencement of the Act of 2009 on 1st December, 2009, because s. 112(5) of the Act of 2009 provides that the power of leasing conferred by s. 112 "applies only to mortgages created after the commencement of this Part". As was the case in relation to *McCann v. Morrissey & Ors*., the decision of the High Court which is of most relevance to the status of the Company as lessee on this application is the decision of Lynch J. in *ICC Bank Plc v. Verling* [1995] 1 ILRM 123, because it was given on an application by a mortgagee seeking interlocutory relief, both prohibitory and mandatory, against the lessees of the mortgagor. In that case, the dispute on which Lynch J. was adjudicating was a dispute between ICC Bank Plc, as mortgagee, and the second and third defendants, who had obtained a lease from the mortgagor, Mr. Verling, without the consent of the bank, and who were resisting the application for interlocutory relief against them, so that it is analogous to the dispute here between the plaintiff as receiver appointed by the Bank and the Company as lessee of the chargor, Mr. O'Shea. In relation to the effect of the lease which had been created without consent of ICC Bank Plc, Lynch J. stated (at p. 129):

> "Clause 15 of the mortgage deed of 31 May 1991 which I have quoted above, is of course such a contrary intention as is referred to in s. 18(3) of the Conveyancing Act 1881 and it is clear therefore and indeed counsel for the second and third defendants conceded that the lease of 23rd March, 1993 was null and void when it was first granted by the first defendant to the second and third defendants."

Lynch J. rejected a submission made on behalf of the second and third defendants that ICC Bank Plc was estopped from disputing the lease. He found, but without in any way purporting to decide the issues in any final manner, that ICC Bank Plc had made out "a strong *prima facie* case" for relief against the second and third defendants. He granted the interlocutory relief sought.

30. Counsel for the plaintiff also referred the Court to academic commentary on the law in relation to the creation of leases by mortgagors and judicial decisions in which the status of a lease made by a mortgagor without the necessary consent of the mortgagee was considered at the hearing of the substantive issues, the most recent being the decision of the High Court (Dunne J.) in *Fennell v. N 17 Electrics Limited* [2012] IEHC 228. The following passage from the judgment of Dunne J. (at para. 30) in that case outlines what is to be derived from the authorities.

> "A number of useful observations can be made from the authorities referred to above. I think, first of all, that it is clear that a mortgagor and mortgagee can expressly agree to exclude the power conferred by s. 18 of the 1881 Act. If the power is excluded, it may be done in a way that permits the mortgagor to grant a lease subject to the prior consent of the mortgagee. If such prior written consent is not obtained by the mortgagor and the mortgagor proceeds to enter into a lease with a tenant, the lease will be binding on the mortgagor as lessor, but as against the mortgagee, the lease will not be binding. It is also clear that in certain circumstances, the lease may be binding on the mortgagee in circumstances such as those described in the authorities referred, where, for example, the mortgagee 'serves a notice on the tenant to pay the rent to him'. It is also clear from the authorities referred to above, that the mere fact that the mortgagee is aware of the existence of a tenancy and that a tenant is paying rent to the mortgagor which is being used to pay the obligations of the mortgagor to the mortgagee, is not, of itself, sufficient to create a relationship between the mortgagor's tenant and the mortgagee."

In summary, what the academic commentary and the authorities indicate is that a lease created by a mortgagor without the consent

in writing of the mortgagee, where the requirement of such consent is expressly stipulated for in the mortgage deed, is void as against the mortgagee and the mortgagee is not bound by it.

31. Adopting the approach adopted by Lynch J. in *ICC Bank Plc v. Verling*, it is appropriate to conclude, but without in any way purporting to decide the issue in any final manner, that the plaintiff has made out "a strong *prima facie* case" that the Lease in favour of the Company is void as against the Bank and as against the plaintiff as receiver appointed by the Bank, because Mr. O'Shea did not obtain the consent in writing of the Bank to the creation of the Lease.

32. There is the unusual feature in this case in that, notwithstanding that Ms. Keane, as solicitor for the Bank, who, as a result of a search in the Land Registry had discovered the existence of the dealing pending in relation to the registration of the Lease, informed the PRA by letter dated 13th April, 2012 that the Bank objected to the Lease being registered as a burden on Folio 976 because the Bank did not consent to it, the PRA without further reference to the Bank registered the Lease as a burden on Folio 976. By letter dated 21st November, 2012, the PRA informed the Bank of its position in the following terms:

> "The consent of the Bank is not required for the registration of leases as the mortgage charges the freehold interest only. As the registration of a lease is not a sub-division of a freehold title the registered mortgage cannot affect the new leasehold folio opened.
>
> Please note also that the registered mortgage ranks in priority to the registration of the lease."

As Folio 976 indicates, a new leasehold folio was opened in addition to the Lease having been registered as a burden on Folio 976. Irrespective of that, as against the Bank and the plaintiff, the legal position is governed by the principles outlined at para. 30 above.

33. However, from the perspective of making title to the Receivership Property, what has happened has implications for the Bank and the plaintiff. The provision obliquely referred to in the letter of 21st November, 2012, s. 62(10) of the Registration of Title Act 1964, provides:

> "When a transferee from the registered owner of the charge is registered, under subsection (9), as owner of the land, the charge and all estates, interests, burdens and entries puisne to the charge shall be discharged."

Of course, the plaintiff is not the registered owner of the Charge; the Bank is. It will be for the plaintiff to resolve how title is to be made, if he sells the Receivership Property.

The plaintiff's entitlement to interlocutory injunctive relief

34. Having addressed and disposed of all the technical arguments made by Mr. O'Shea, it remains to apply the criteria for determining whether the plaintiff is entitled to the interlocutory relief he claims, that is to say, the criteria laid down by the Supreme Court in *Campus Oil v. Minister for Industry and Energy (No. 2)* [1983] I.R. 88. I am satisfied that the plaintiff has complied with those criteria for the following reasons:

> (a) The plaintiff has established that there is a serious issue to be tried that, as receiver appointed by the Bank, he is entitled not to be impeded or obstructed in taking possession of the Receivership Property from Mr. O'Shea and the Company. As regards his status vis-à-vis the Company, a strong *prima facie* case has been made out.
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> (b) It is clear, given the size of the debt owed by Mr. O'Shea to the Bank, in respect of which the Bank has obtained judgment, and what the evidence demonstrates in relation to the assets and means of Mr. O'Shea, that Mr. O'Shea would not be in a position to compensate the plaintiff for loss incurred by him as receiver, if an injunction is refused and the plaintiff is ultimately successful at the trial. On the other hand, the plaintiff, in his grounding affidavit, has proffered an undertaking as to damages to the Court, which will be in place to adequately compensate Mr. O'Shea and the Company for any loss they incur, if an injunction is granted but they are ultimately successful on the hearing of the substantive action.
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> (c) Insofar as it arises, I am satisfied that the balance of convenience favours granting, rather than refusing, an injunction.

Orders

35. Subject to one practical matter being addressed, I propose making orders against both defendants in the terms of paras. (a), (b), (e) and (f) of the notice of motion as outlined at para. 3 above. Rather than making an order in the terms of paras. (c) and (d), the Court will accept undertakings from Mr. O'Shea in the terms of the orders sought in those paragraphs.

36. The practical matter which is of concern is whether there is a crop growing on the Receivership Property which is due to be harvested within the next few months. If there is, I will hear submissions as to whether the orders to be made should be modified to enable Mr. O'Shea to harvest the crop.