

THE HIGH COURT
REGISTRATION OF TITLE ACT 1964 SECTION 19(1) AND 159(6) (8)
AND
FOLIO MN 3294F MONAHAN

[2015 No. 315 MCA]

[CT39/2015]

BETWEEN

MICHAEL AND BRIGID QUINN

APPLICANTS

AND

THE PROPERTY REGISTRATION AUTHORITY

RESPONDENT

AND

JOHNNY AND BRIGID HOEY

NOTICE PARTIES

JUDGMENT of Mr. Justice Henry Abbott delivered on the 11th day of April, 2016.

1. The applicants herein are husband and wife and the husband is a Director of Cloughvalley Stores Ltd. a limited liability company that was, but is not now, the registered owner of Folio MM 3294F Co. Monaghan.

2. By notice of motion dated the 22nd day of October, 2015 the applicants applied for an order directing the Property Registration Authority of Ireland ("The Authority") being the respondent herein to make available a certified copy of Instrument No. D2012LR085263D. The applicants claim this instrument was used to affect a sale to the notice parties herein by the Allied Irish Bank Plc. as mortgagee in possession.

Procedural Aspects

3. The applicants are personal litigants. They applied to the Authority for a copy of the instrument. This application was refused and the Authority, through its appropriate officer, notified the applicants that the application would be treated as withdrawn and informed them that the fees charged for the application could be recovered on that basis. Having considered the history of the application and the substance thereof, this Court was of the view that the application to the Authority should be taken as having been refused for the purpose of this application to the court and Mr. Buttanshaw, counsel for the respondent/defendant, has agreed to this course.

4. The notice of motion was listed in the ordinary list of the High Court in the first instance, and this gave rise to a certain amount of confusion in relation to what the appropriate court might be to hear the motion. Ultimately, the President of the High Court assigned the motion for hearing before me as Land Judge dealing with appeals from the decisions of the Registrar pursuant to s. 19 of the Registration of Title Act 1964. The notice of motion sets out the claim in the following terms.

"An order directing the property registration authority of Ireland to make available a certified copy of instrument number ..."

5. While this wording does not explicitly say so, the substance of the relief being sought by the applicants is, in effect, an appeal pursuant to s. 19 of the Registration of Title Act 1964. Therefore the court, on the consent of the applicants and the respondent, decided that the application would proceed on the basis of an appeal pursuant to s. 19 of the Registration of Title Act 1964.

Standing of the Applicant/Applicants

6. In his grounding affidavit, the first named applicant states that he is a Director of the said Cloughvalley Stores Ltd. now in receivership and that he has residual obligations to file accounts in relation to the company and requires sight of the instrument in question to furnish such returns. The first named applicant referred to correspondence with the Companies Office, which showed that he was active in that regard. The court is satisfied that the applicants did not lose their standing to make an application for inspection or production of the relevant instrument, by reason only of the fact that they were not the registered owners at the time of the application. Counsel for the respondent agreed with this proposition during the course of the hearing.

The Hearing

7. The court considered the grounding affidavit of the second named applicant Brigid Quinn sworn on 22nd October, 2015, the supplemental affidavit of Michael Quinn dated 15th November, 2015, the replying affidavit filed on behalf of the respondents of Ms. Liz Pope one of 13th November, 2015, and the second supplemental affidavit of Michael Quinn the first named applicant sworn on 11th February, 2016. The said affidavits were opened to the court by Brigid Quinn the second named applicant and the first named applicant made extensive submissions to the court.

8. The thrust of the applicants' arguments was that whereas the sale was effected by a transfer by the bank as mortgagee in possession, the appropriate course was for the receiver to sell using his powers as such. He also referred to the fact that the receiver in this particular case had been criticised for excessive fees charged in other cases, and referred to extensive

correspondence of the applicants with the company's office querying the fees charged by the receiver to the company in this particular case.

9. The applicants averred that they had sued both the Allied Irish Bank (hereafter AIB) and the notice parties in this application (who were the purchasers under the said instrument and were now the registered owners of the property). In different proceedings (not before this Court) the applicants had sued both the AIB and the notice parties herein for relief in respect of the transactions by which the notice parties became the registered owner of the said Folio. The applicants had already obtained judgement in default of defence against the notice parties in respect of the said relief, but the proceedings still remained pending in the High Court against the AIB. In fact, an application remains pending in the High Court by the AIB on the basis that there is no case to answer in the said proceedings.

10. The first named applicant submitted that the applicants required sight of the said instrument for the purpose of pursuing their outstanding claim against the AIB and resisting the application to have the proceedings struck out.

The Respondent's Submissions

11. Counsel on behalf of the respondents submitted that the Authority was correct in refusing to allow production/inspection of the instrument in question. He submitted that the rule relating to inspection of filed documents or obtaining copies thereof, contained in r. 159 of the Land Registration Rules 2012, is very clear; the registered owner of property or a person authorised by such owner, are the only persons who may inspect the documents in the Registry on a dealing with the property of the owner. This is subject to the exceptions set out in paras. 3 to 7, r. 159 of the Rules of 2012. He conceded that para. 9, r. 159 of the Rules of 2012, provides an important further exception on which the applicants might possibly rely. This provides that the authority may, in special circumstances, and on such terms as it shall think fit, permit a person to inspect or obtain a copy of a document filed in the Land Registry. He submitted that while there were no precedents in the Land Registry relating to decisions on such applications, the fact was that the special circumstances envisaged by para. 9, r. 159 of the Rules of 2012 do not arise in this case. When pressed by the court as to what such a special circumstances might be, he conceded that they might arise where an infant or a person with a disability was registered owner, or where persons entitled under a trust might require to see the documentation on an urgent basis and in the absence of trustees being available to respond.

12. He submitted that it was open to the applicants herein to apply in the (still pending) proceedings against the AIB to have production of a copy of the instrument, which would be in possession of the AIB solicitors in the normal course of a sale. He further submitted that the fact that the applicants were in a position to describe the instrument in outline showed that they had enough knowledge of its existence outside of the filing in the Land Registry to show that no special circumstances existed. The applicants replied that the imminence of the application by AIB to have the proceedings against them dismissed brought an urgency to the application, which in itself related special circumstances.

The Law

13. The Land Registration Rules 2012 came into operation on 1st February, 2013, replacing the Land Registration Rules 1972 to 2011. These Rules are made pursuant the Registration of Title Act 1964, as amended. The relevant paragraph of r.159 of the Land Registration Rules 2012 which relates to the inspection filed documents and obtaining copies thereof in the Land Registry, and provides as a risk follows:-

"(1) The registered owner of property and any person authorised by such owner, or by an order of the court by these Rules, but no other person, may inspect the document filed in the registry on dealing a transaction with the property of the owner.

(2) Any person who would be entitled to inspection of a document relating to property, if its ownership was not registered under the Act, and the document was in the possession of the person by law entitled to the custody thereof, shall be entitled to inspect the document, signed in the registry ...

(9) The authority may, in special circumstances and on such terms as shall think fit, permit a person to inspect obtain a copy of a document filed in the registry"

14. McAllister in *Registration of Title in Ireland* 1st Ed., (Dublin, 1973) p. 314, traces the history of similar provisions to r. 159 of the Land Registration Rules 2012 in the earlier rules, and states, in relation to the earlier r. 188 of the Land Registration Rules 1972, as follows:-

"Rule 188 now, clearly limits further the right to inspection. Notwithstanding the decision In Re Fitzgerald, supra, it is submitted that a man's title deeds are his private property so that no one except those with a genuine interest should be allowed inspection of them and that efforts of would be litigants, curiosity mongers and mischief makers should be discouraged as much as possible"

15. I am satisfied that for the purpose of this application r. 188 of the Land Registration Rules 1973 sets a standard which has been replicated by r. 159 of the Land Registration Rules of 2012.

Conclusion

16. The applicants still have the possibility to apply to the judge before whom their case against the AIB is still pending for such relief as may be afforded to them for sight or inspection of the relevant instrument, if, in the opinion of the court, it is necessary for same for the purposes of pursuing their action or defending the application being made against them by the bank to have their proceedings struck out. In all probability the bank will have a copy of the instrument concerned, and would be in a position to affirm that the copy thereof is the instrument in the Land Registry. It might not be necessary to have inspection or production of the instrument in the Land Registry at all. Even if the original of the instrument now in the Land Registry was necessary for the purpose of pursuing court proceedings, it is for the court hearing the proceedings to make such a determination and then only on notice to the AIB and the registered owners. I do not presume to speculate what the court would decide in such circumstances, as the issues are clearly not before this Court as an appellate court hearing an appeal under s. 19 of the Registration of Title Act 1964. For these reasons, I find that there are no special circumstances within the meaning of para. 9, r. 159 of the Land Registry Rules of 2012, by which the authority ought to have permitted the applicants to inspect or obtain a copy of the instrument filed in the Registry. I have already informed the applicants at the hearing that this would be the decision of the court, but undertook to furnish the reasons as they appear in this judgement. Accordingly, the appeal is dismissed.