

BETWEEN

PERMANENT TSB PLC (FORMERLY IRISH LIFE AND
PERMANENT PLC)

PLAINTIFF

AND

LIAM RABBITT

DEFENDANT

JUDGMENT of Mr. Justice Meenan delivered on the 25th day of January, 2019**Introduction**

1. These proceedings issued in the Circuit Court, by way of a Civil Bill for possession, on 9 January 2015. The matter appeared before the County Registrar on some six occasions between 2015 – 2016 before being transferred to the Judge's list in the Circuit Court. On 18 January 2017 the Circuit Court granted the plaintiff an order for possession, subject to a stay for some three months. Up to that point some fifteen affidavits (not including affidavits of service) had been filed in the proceedings.

2. The defendant wished to appeal the order of the Circuit Court but was out of time to do so and consequently brought a motion before the Master of the High Court in May 2017 to extend time within which to lodge an appeal. The plaintiff ultimately consented to an extension of time to appeal the order of the Circuit Court.

3. The appeal to the High Court prompted an exchange of some five further affidavits (again excluding the affidavits of service). In addition, there was a High Court motion on foot of which the plaintiff provided to the defendant the originals of certain documents. There were also a number of applications of a procedural nature before the High Court.

4. The appeal came on for hearing before this Court on 17 January 2019 and concluded the following day. The defendant represented himself before the Court, as he had done in earlier appearances both before the County Registrar and the Circuit Court.

Background

5. In April 2005 the plaintiff agreed to make a loan facility available to the defendant. The term of the loan facility was to be for a period of 30 years and repayment was to be made by way of monthly instalments of both the principle and interest. It was further provided that in the event that the defendant defaulted in the making of two monthly repayments the plaintiff would be entitled to terminate the loan and demand repayment of all monies then outstanding.

6. The sum of €350,000 was advanced by the plaintiff to the defendant. By way of security for the said loan the defendant executed a mortgage in favour of the plaintiff over No. 3 Moeran Road, Walkinstown, Dublin 12 on 2 June 2005.

7. The defendant had independent legal advice concerning the loan and the mortgage at the relevant times.

8. On or about 13 May 2008 and various dates thereafter the defendant failed to make repayments of the principle and/or interest. As of 7 November 2014 the monies outstanding to the plaintiff amounted to some €431,491.90 including arrears of €129,936.

9. The defendant has made no repayment whatsoever on the loan since 4 October 2012, a period in excess of six years. By the time of the hearing of the appeal before this Court, the arrears had increased from some €131,882 to a figure in excess of €185,000.

10. Despite requests from the plaintiff seeking the defendant to engage with them, the defendant made no serious attempts to do so. Further, in the course of his application to extend time to appeal the order of the Circuit Court, the defendant exhibited a report from a firm of accountants which contains the following: -

"Our client Liam Rabbitt has always made every effort to repay the mortgage and has to date made repayments over €79,000 on a mortgage of €350,000"

11. Though it is correct that the defendant did make repayments on the mortgage up until October 2012 it was entirely incorrect and misleading to state that the defendant had "always made every effort to repay the mortgage".

Defences raised by the defendant

12. Both in this Court and in the Circuit Court the defendant purported in various affidavits to set out a number of defences. As will be seen from a consideration of these defences, they fall well short of being stateable. The defences are: -

(a) The defendant claims that he did not get a fair hearing in the Circuit Court though no credible evidence was advanced by him in support of this. In any event, if the defendant did have a complaint with regard to the conduct of the hearing in the Circuit Court then the appropriate course of action would have been for him to initiate judicial review proceedings rather than proceeding by way of an appeal of the Circuit Court order.

(b) The defendant alleges that there were breaches of various court rules and practice directions, none of which have any application to the instant case.

(c) There were numerous objections to the *jurat* of the various affidavits relied upon by the plaintiff. These objections have no basis in law (see *Allied Irish Bank Plc & Ano. v. Gibney & Ano.* [2018] IECA 363).

(d) The defendant alleges that the Circuit Court had no jurisdiction to hear the plaintiff's claim. Section 3 of the Land and Conveyancing Law Reform Act 2013 clearly gives the Circuit Court the requisite jurisdiction to hear claims such as the plaintiff's.

(e) The defendant made a number of complaints about not having access to the originals of various documents being relied upon by the plaintiff and claimed numerous breaches of the Data Protection Acts. I am satisfied that all necessary documentation was exhibited to the various affidavits filed by the plaintiff.

(f) The defendant seeks to rely upon the Unfair Terms in Consumer Contracts Regulations 1995. The defendant, however, failed to identify any particular term that he contended was unfair. There was rather a general objection to any term that required him to repay the loan together with interest. In any event, having examined the general terms and conditions of the mortgage, the Court is satisfied that Article 4 of the said Regulations apply as do the provisions of Schedule 3. The defendant has no defence on this point (see *Allied Irish Banks Plc v. O'Donoghue & Ano.* [2018] IEHC 599.)

13. At no point in the numerous affidavits that the defendant has filed during the course of these proceedings has the defendant ever contested or denied the fact that he has borrowed the money from the plaintiff, that he has had the benefit of these monies in purchasing the secured property or that he has made no repayment since October 2012.

Conclusion

14. There is a reluctance on the part of the courts to make an order for possession where the borrower has failed to make repayments which he or she has agreed to do and this is understandably so. It must be borne in mind, however, that in many cases the defaulting borrower would never have owned the property sought be recovered were it not for the monies borrowed and not repaid. In this case there are a number of other factors which the Court must take in to consideration: -

(i) The defendant has made no repayments whatsoever since October 2012, in excess of six years ago.

(ii) The defendant has failed to engage with the plaintiff in any meaningful way in the past six years. Insofar as the Court has a discretion in cases such as this, a factor which may be raised in favour of the defaulting borrower is proper engagement with the financial institution involved. This, however, is not a mitigating factor that the defendant is entitled to avail of as there has been no meaningful engagement with the plaintiff.

(iii) Over a period of some four years the defendant has engaged in and persisted with putting forward defences which have no merit. This has resulted in protracted legal proceedings which the defendant may end up paying for.

(iv) While the defendant has engaged in pointless litigation, the amount owed in arrears has risen from some €130,000 to a figure in excess of €185,000. This may well have the effect of eliminating any remaining equity the defendant may have in the property.

(v) The defendant sought to rely upon a letter from a firm of accountants which contained information that was incorrect and misleading.

15. By reason of the foregoing I affirm the order of the Circuit Court.