THE HIGH COURT

[2018 No. 578 P]

BETWEEN

KARL O'NEILL

PLAINTIFF

AND

SINEAD O'CONNOR

DEFENDANT

JUDGMENT of Mr. Justice Allen delivered on the 11th day of December, 2018

1. In this case I dealt with four motions together, one on behalf of the plaintiff and three by the defendant, on 27th and 28th November, 2018. The plaintiff was represented by solicitors and counsel. The defendant represented herself with the assistance of, or at least prompted from time to time as to what she might say by, a McKenzie friend. I heard the motions in the order in which they were issued but I will deal with them in logical order.

2. By plenary summons issued on 23rd January, 2018 the plaintiff claimed an injunction requiring the defendant to forthwith surrender possession of two properties, the first at 23 Lifford Park, South Circular Road, Limerick ("*the Limerick property*") and the second at 9 Muckross Lakeside Holiday Village, Muckross, Killarney, County Kerry ("*the Muckross property*") and a variety of injunctions restraining the defendant, her servants and agents, from interfering with the discharge by the plaintiff of his duties as receiver over the properties.

3. At the time the action was commenced there was a problem with the Limerick property that needed to be dealt with urgently. The Limerick property was a house which had been let by the defendant to four students. On 15th January, 2018 the plaintiff had written to the tenants of the Limerick property advising them of his appointment. On 22nd January, 2018 the plaintiff's agent in Limerick had a call from the mother of one of the students to say that the defendant had arrived at the property with a sleeping bag and had told them that she was going to change the locks. The defendant wanted the tenants to sign a document stating that they would not have dealings with anyone other than her. When the tenants declined to sign the document, the defendant said that she wanted them out of the house. The tenants reported to one of the plaintiff's staff that they were alarmed and worried, not least by the fact that the defendant insisted on staying in the house overnight and had three men in the house with her until 12.30 am. One of the tenants had reported that she had been woken by the defendant on the morning of 23rd January, 2018 who shouted "get out" at her. Over the course of 22nd and 23rd January the Gardaí were called at least twice.

4. The Plaintiff moved swiftly. Having issued his summons on 23rd January, 2018, he moved immediately for a series of interim injunctions, which were granted by Costello J. On the same day, he issued and served a motion for interlocutory relief, returnable for 25th January, 2018.

5. The plaintiff is a partner in KPMG Chartered Accountants. He was appointed (or, the defendant says, and I will say for the moment, purportedly appointed) by AIB Mortgage Bank over each of the Limerick property and the Muckross property by separate deeds dated 7th October, 2016. It does not appear that as of 23rd January, 2018 the plaintiff had taken any step in relation to the Muckross property but the defendant and her husband, directly and by a firm called Fitzpatrick Financial Solutions ("*FFS*") had been in correspondence with Allied Irish Banks plc, AIB Mortgage Bank, Beltany Property Finance DAC ("*Beltany*") (to whom the defendant's loans and the security held for them had been sold, or purportedly sold) and Beltany's agent, Pepper Finance Corporation (Ireland) DAC, challenging the validity of the assignment of the loans and security, and the validity of the plaintiff's appointments.

6. The immediate object of the action and the motion was to resolve the difficulty with the Limerick property but the Muckross property was included in both. In those circumstances, the focus of the application and the affidavits was very much on the Limerick property.

7. The plaintiff's motion for interlocutory relief came before Baker J. on 25th January, 2018. Baker J. continued the interim injunctions which had been granted by Costello J. until further order and made a number of orders directed to restoring the students into possession of the Limerick property.

8. The orders of 23rd and 25th January, 2018 dealt only with the Limerick property. The plaintiff's motion for interlocutory relief in relation to the Muckross property was adjourned on 25th January, 2018 to 27th February, 2018 and then from time to time until it came before me on 27th November, 2018.

9. With the assistance of, or at least prompted by, those who held themselves out to her as being able to assist her, the defendant issued three motions against the plaintiff.

10. The first was a motion issued on 25th January, 2018 and originally returnable for 26th February, 2018 for the trial of 23 so called points of law. By that motion the defendant sought to join Allied Irish Banks plc and AIB Mortgage Bank to the action and sought a variety of orders directed to the validity of the assignment of the loans and security, and the validity of the plaintiff's appointments. The defendant also sought to have the action dismissed on the ground that her husband, who was jointly party to the loans and mortgages, had not been named. That motion was grounded on an affidavit of the defendant, which was also sworn in answer to the plaintiff's motion.

11. The defendant's second motion was issued on 10th April, 2018 and originally returnable for 30th April, 2018. By that motion the defendant sought, in eight iterations, an order dismissing or striking out the plaintiff's claim for want of standing or jurisdiction; an order declaring that the plaintiff's paperwork is bad and that the defendant's paperwork is good; an order that the plaintiff has trespassed on the private life and property of the defendant; and damages.

12. The defendant's third motion was issued on 9th May, 2018 and originally returnable for 25th June, 2018. In his affidavit sworn on 23rd January, 2018 the plaintiff had deposed that shortly after his appointment he was instructed to place the receivership on hold. By her third motion the defendant claims an order for discovery by the plaintiff of any and all documentation in relation to the placing of a "hold" on the receivership by AIB Mortgage Bank; the removal of the "*hold*"; an order compelling the plaintiff to produce or to

procure from Beltany "*any and all documentation in his possession and which ought to be in his possession confirming beyond all reasonable doubt the lawfulness of his appointment*"; and an order "*declaring and clarifying that in the absence of and/or failure by the plaintiff to produce same irrevocably compromises and voids the plaintiff's claim in its totality against the defendant".*

13. In an affidavit filed on 22nd February, 2018 and again in an affidavit filed on 9th May, 2018 the defendant challenged the validity of the plaintiff's affidavits on the ground that the plaintiff had not set out his "*true place of abode*" as required by O. 40, r. 9 of the Rules of the Superior Courts. Mr. O'Neill, consistently, has given his office rather than his home address.

14. The point was either a good point or a bad point. If it was a good point it was not made any better, and if it was a bad point it was not changed into a good point, by repeating it *ad nauseam*, or by making it in capital letters. In fact, it is a thoroughly bad point. It was a bad point in 1813 when it was rejected by Lord Ellenborough C.J. in *Haslope v. Thorn* (1813) 1 M. & S. 102. It was a bad point when rejected by the Court of Appeal in *Kearney v. Bank of Scotland plc* [2015] IECA 32. It was a bad point when rejected by the High Court most recently in *Beakey v. Bank of Ireland Mortgage Bank* [2018] IEHC 589. And it is a bad point now.

15. In her conduct of these proceedings, the defendant has demonstrated that she is not in the least short of determination, conviction and bad advice. By her several motions, and in argument before me, she seeks to forestall the proceedings against her by insisting that the plaintiff must prove, to her satisfaction, and beyond reasonable doubt, the validity of the assignment of the loans and security and the validity of the plaintiff's appointment as a condition precedent to the plaintiff's entitlement to move his application and the court's jurisdiction to entertain it. Nothing short of such proof, she argues, will establish the plaintiff's *locus standi*.

16. *Locus standi* entails no more than that a litigant must show that he has an interest in the subject matter of the dispute. The plaintiff was appointed, or purportedly appointed, as receiver over the Limerick property and the Muckross property by deeds dated 7th October, 2016. The defendant challenges the validity of that appointment and that is the issue (or one of the issues) which the court must determine. The proposition that the plaintiff must first prove his case before being allowed to make it is not sensible, not least in a case, such as this, where the defendant says that he cannot do so.

17. To make out his case to be entitled to the interlocutory orders he seeks in relation to the Muckross property, the plaintiff must first establish that he has a *prima facia* case. The decision of the court on an interlocutory application such as this will not finally determine the issue as to the validity of the plaintiff's appointment or the effectiveness of the underlying transfers of the loans and security.

18. The defendant's second motion seeks to have the action summarily dismissed. The threshold test for such an application is that the court must be satisfied that the action is bound to fail. I am not so satisfied and I will refuse the motion.

19. The defendant's first motion seeks, firstly, to join Allied Irish Banks plc and AIB Mortgage Bank. The defendant could not say what relief she wanted from either but wanted to join them with a view to seeing what might happen in the course of the trial. I am satisfied that the issues in this action are the validity of the appointment of the plaintiff, and the validity of the transfer of the loans and security to Beltany. Notwithstanding the fact that Allied Irish Banks plc was the original lender and AIB Mortgage Bank originally appointed the plaintiff, those companies are not affected by the issues and there is no basis upon which they should be joined.

20. The defendant's first motion seeks an order for the trial of what are said to be preliminary issues of law as to the validity of the transfer of the loans and the security and the validity of the plaintiff's appointments. Those issues are not issues of law but mixed issues of law and fact which are the issues in dispute in the action. It makes no sense to contemplate that the issues in the action might be tried as preliminary issues. In fact, what appears to be behind this motion is an attempt to have the action tried before the plaintiff's interlocutory motion. This motion is misconceived and I will refuse it.

21. The defendant's third motion seeks discovery. This is a case which has not gone beyond the plenary summons. It is well established that discovery will not usually be ordered until the pleadings have closed and the issues in dispute identified. There is a jurisdiction to order discovery at an earlier stage in exceptional circumstances. This is not such a case. The defendant does not say that the material sought is necessary for her to formulate or progress her defence, nor is it. As I shall come to, the plaintiff relies on the decision of this court in *English v. Promontoria (Aran) Ltd* [2016] IEHC 662 as entitling her to require *prima facie* proof of the devolution of the loans and security and the entitlement of the plaintiff to require her to give up possession of her property. It is well settled that in his motion to enjoin interference with the discharge of his functions, the onus is on the plaintiff to produce *prima facie* evidence of his entitlement to possession. The evidence offered by the plaintiff in support of his motion will either be sufficient or insufficient to make out his *prima facie* case and there is no need for the plaintiff, at this stage of the proceedings, to have anything other than what the plaintiff relies on: all of which she has as the respondent to that motion. In truth, this motion, also, appears to have been calculated to delay and disrupt the plaintiff's motion. The defendant's third motion is misconceived and I will refuse it.

22. I come to the plaintiff's motion.

23. As I have said, the motion issued on 23rd January, 2018 was almost exclusively directed to the situation in Limerick. The grounding affidavit of the plaintiff disclosed that he had also been appointed as receiver over the Muckross property, which, he said, was more particularly described in the schedule to a deed of mortgage dated 15th October, 2005. The plaintiff exhibited a copy of his deed of appointment but not a copy of the deed of mortgage.

24. In that affidavit, the plaintiff suggested that it was clear from the correspondence issued by FFS on their behalf, that Mr. and Mrs. O'Connor did not accept the validity of his appointment: which it was. The plaintiff went on to suggest that it was clear from that correspondence that Mr. and Mrs. O'Connor were intent on interfering with his entitlement to possession of both the Limerick and the Muckross properties. I am unconvinced of that. The threat made by FFS in its letter of 6th December, 2017 was that legal proceedings were being drafted and that these would be prolonged, tedious and contrary legal proceedings. It is of some significance, I think, to note that whatever apprehension may have been created by the FFS correspondence, Mr. O'Connor was not joined as a defendant. That said, if the correspondence from FFS did not ground a reasonable apprehension that "*the Borrowers*" might or would interfere with the plaintiff's rights over the Muckross property, the defendant's conduct in Limerick certainly did ground a reasonable apprehension that she might, or would, interfere in Muckross.

25. On 24th and 25th January, 2018 a number of further affidavits were filed on behalf of the plaintiff which dealt exclusively with the Limerick property. On 25th January, 2018 the defendant swore and filed an affidavit in which she agitated a number of issues as to the validity of the plaintiff's appointment and the alleged absence of any relationship between her and Beltany but dealt only in passing with the plaintiff's evidence of what was alleged to have been going on in Limerick.

26. In his grounding affidavit sworn on 23rd January, 2018 the plaintiff gave evidence of his appointment by AIB Mortgage Bank pursuant to a mortgage between Mr. and Mrs. O'Connor and Allied Irish Banks plc, and deposed that his appointment over the Limerick property continued by virtue of a deed of novation dated 30th June, 2017 executed pursuant to a loan sale agreement dated 13th April, 2017 by which loan sale agreement, it was said, Beltany acquired "*the interest of the borrowers*" in that property. He obviously meant the interest of the lender. The plaintiff did not repeat that evidence in relation to the Muckross property but I think that it is reasonable to infer that his case in relation to the Muckross property was the same as that in relation to the Limerick property.

27. In view of the immediate urgency of the situation in Limerick in January the plaintiff did not exhibit the loan sale documents in his grounding affidavit but he did say that they would be put before the court: and so they were in an affidavit of Donal O'Sullivan, sworn on 21st February, 2018.

28. Mr. O'Sullivan is a director of Beltany. He exhibited the two instruments of appointment; the two facility letters; the mortgage sale agreement; and the deed of novation. He purported to exhibit the two mortgages. Mr. O'Sullivan deposed that all monies due and owing under the loan facilities were now due to Beltany; that the borrowers were in continuing default; that all rights pertaining to the mortgage were exercisable by Beltany; and that he had been advised and believed that there was no issue or infirmity with the mortgage or the appointment of the receiver. Mr. O'Sullivan exhibited a letter of demand dated 23rd May, 2016 for both loans.

29. In the course of the hearing before me it became apparent that the copy mortgage exhibited by Mr. O'Sullivan which was supposed to have been the mortgage of the Muckross property was a mortgage dated 12th July, 1996. This was nine years before the Muckross loan and the schedule to the mortgage described a property at Killarney Road, Castleisland, County Kerry, and showed a different folio number to that shown on the copy folios which had been exhibited for the Muckross property. Moreover, the date on the exhibit did not coincide with the date given in the body of the plaintiff's affidavit.

30. After lunch on 27th November, 2018, counsel for the plaintiff produced a short affidavit of the plaintiff's solicitor exhibiting a copy of the correct mortgage, dated 15th October, 2005 which was said to be in the same form as the 1996 mortgage.

31. In a case in which the plaintiff claimed to have been appointed pursuant to a power contained in the mortgage it was unsatisfactory to produce the relevant document at the last minute. I was concerned to ensure that the defendant was not prejudiced and rose early to allow her to consider the new document. On examination, the two forms were in precisely the same printed standard form so that any legal argument the defendant might have had by reference to the mortgage was unaffected by the late production of the correct mortgage.

32. When the case resumed before me on 28th November, 2018 the defendant, with some justification, expressed outrage that the correct mortgage had been produced at the last minute. The defendant asked that the case against her be immediately dismissed, which I declined to do. The defendant then applied for a ten-week adjournment to allow her to follow up on a request said to have been previously made to inspect all of the title document in relation to the security. I took the view that because the two mortgages were in precisely the same form the defendant had not been prejudiced and that the late production of the correct mortgage did not give rise to any immediate requirement for an inspection of the original documents and I ruled accordingly.

33. In due course I will examine the documents relied upon as establishing the plaintiff's case to be entitled to the interlocutory relief.

34. On 22nd February, 2018 a further affidavit of the plaintiff was filed. The declared object of this affidavit was to update the court as to developments since 25th January, 2018. All that is material for present purposes is that the plaintiff deposed to having on 13th February, 2018 issued letters to any holidaymakers in the Muckross property giving notice of his appointment. He said that he would honour any existing verified bookings of that property. Following up on a query raised by Baker J. in the course of the hearing before her, the plaintiff deposed that the transfer to Beltany of the mortgage over the Muckross property, pursuant to which he was appointed, had been registered on Folio 52897F, County Kerry on 15th September, 2017. The plaintiff exhibited a copy of the folio showing the registration of the transfer.

35. On 22nd February, 2018 the defendant filed a further affidavit. It is prolix and argumentative but makes a number of points. The defendant asserted her right, as established by *English v. Promontoria (Aran) Ltd.*, to call for proof of the devolution of the loans and security, which, she asserted, had not been provided. The defendant took issue with some of the plaintiff's update as to what had happened in Limerick, with which I am not concerned. There was not a word about the Muckross property.

36. On 26th February, 2018 the plaintiff's solicitor swore a short affidavit. I am prepared to assume that he did so with the plaintiff's authority, but he should have said so. The purpose of the affidavit was to update the court as to developments which took place at the Muckross property on Friday mid-morning of Friday 23rd February. It does not appear that the solicitor was in Muckross on the previous Friday or that he had spoken to anyone who was. He simply exhibited a copy of a report from the plaintiff's agent, Qualitas. I am prepared to proceed on the basis that the solicitor believed the content of the report to be true, but he should have said so.

37. The report, called a "*Lockdown Service Report*", is written by a Mr. Joe Lennox who attended at the Muckross property from 10:00 to 13:40. Having rung the doorbell, knocked on the door and shouted through the letterbox of the house (which, according to the note was supposed to be empty) Mr. Lennox drilled out the lock. He noticed that the heating was on and called out again. A lady came to the top of the stairs who said that she had rented the property until the following Sunday. Mr. Lennox sought instructions by telephone from the plaintiff's office and was told to change the locks and give the lady keys. He did that. A lady called Eimear brought Mr. Lennox to the reception of the holiday village to wait for the defendant, who arrived. Mr. Lennox showed the defendant his identification and a copy of the plaintiff's appointment, which the defendant said meant nothing. The defendant wanted the lock changed again "*with a new lock opened from the box in front of her.*" Having spoken again to the plaintiff's office, Mr. Lennox refused to do so but said that the defendant should contact the receivers if she wanted to discuss. The upshot was that "*[The defendant] informed [him] to make a note that the lock would have to be changed on the door. I said I would and I left.*"

38. The defendant's account of what happened in Muckross on 23rd February, 2018 was set out in an affidavit she swore on 10th April, 2018. She deposed that at about 10:40 an unlicensed locksmith called Joe Lennox, who was employed by the plaintiff's agent Qualitas, had changed the locks and had informed the guest that if they did not leave he would call the Gardaí and turn off the water. She said that Mr. Lennox had showed her a copy of the deed of appointment on his phone. She exhibited a copy of Mr. Lennox's identity card. The defendant alleged that Mr. Lennox had threatened and intimidated her guest and had no legal standing to interfere with her property. She said that Qualitas was not registered with the Data Protection Commissioner. She said that Qualitas were on site again at Muckross Holiday Homes again on Tuesday morning 27th February, 2018 but did not say what, if anything, happened then. The defendant said that she required a file to be sent to the DPP.

39. On 27th April, 2018 the plaintiff swore an affidavit in reply to the defendant's affidavit of 10th April, 2018. The plaintiff referred to

the Notice of Motion issued by the plaintiff which, he said, he was advised was misguided. He contradicted so much of the defendant's affidavit as had comprised argument. He did not deal at all with the Muckross property or what had happened there on 23rd or 27th February.

40. I pause here to observe that no explanation has been offered as to why the plaintiff took the steps he did at the Muckross property on the Friday before the Tuesday on which his motion for interlocutory relief was listed for hearing before the High Court.

41. The defendant swore further affidavit on 26th June, 2018 and 22nd November, 2018 but those affidavits merely repeated the arguments previously made.

42. It was submitted by counsel for the plaintiff that the threshold test to be applied on this motion was the *Campus Oil* test, that is whether there was a *bona fide* issue to be tried but counsel urged that even if the test was the *Maha Lingam* test, that is, whether the plaintiff had made out a strong case that he would succeed at trial, he comfortably met that threshold. In my view, several of the reliefs sought by the plaintiff are both in form and in substance mandatory orders and the higher threshold applies.

43. The defendant admits that she and her husband borrowed money from Allied Irish Banks plc and that they signed a mortgage over the Muckross property as security for that loan. The defendant says, however, that AIB Mortgage Bank was not entitled to appoint a receiver and that she has no privity with Beltany. As I have said, the defendant relies on the decision in *English v. Promontoria* (Aran) Ltd. [2016] IEHC 662.

44. The defendant's arguments are confused and in some respects misplaced. For example, she points to the power of attorney in the mortgage, arguing that only the secretary of Allied Irish Banks plc could validly have appointed a receiver. In substance however, the defendant's argument can be understood to be that the plaintiff has not demonstrated clearly, or at all, how he, on the instructions of Beltany, comes to call for delivery of possession of her property, which was mortgaged to Allied Irish Banks plc. Having carefully reviewed the evidence, I think that the defendant has a point.

45. The mortgage of the Muckross property was given to Allied Irish Banks plc. While, as I have said, the copy mortgage originally exhibited by Mr. O'Sullivan was not that given for the Muckross property, the body of the affidavit gave the correct date for that mortgage, which was 15th October, 2005. Having dealt with the mortgages and the loan facilities, Mr. O'Sullivan jumps to the mortgage sale agreement dated 13th April, 2017 by which, he says, Beltany acquired "the lenders" interest in the Muckross property, and from there to a deed of novation dated 30th June, 2017 by which, he says, his appointment over the receivership properties was continued.

46. It seems to me that there is a gap in the narrative and in the evidence. Mr. O'Sullivan does not explain how it came about that Mr. O'Neill was appointed by AIB Mortgage Bank. It is true that the deeds of appointment recite a scheme, a transfer agreement, and a Schedule No. 1, all dated 8th February, 2006 and an order made under s. 58 of the Asset Covered Securities Act, 2001, the Asset Covered Securities Act, 2001 (Approval of Transfers between Allied Irish Banks plc and AIB Mortgage Bank) Order, 2006 (S.I. No. 60) and recite that the benefit of the mortgages was transferred to AIB Mortgage Bank with effect from 13th February, 2006 but Mr. O'Sullivan, if he was in a position to do so, did not say so in his affidavit. Nor did he refer to or produce the scheme, transfer agreement, or Schedule No. 1 from which the defendant or the court might have been able to verify that the Muckross loan and mortgage were included in that scheme.

47. Mr. O'Sullivan refers to and exhibits what he refers to as a true copy of the mortgage sale agreement dated 13th April, 2017. The exhibit is plainly not a true copy of this document because it is heavily redacted. No explanation has been offered for this redaction. Moreover, the exhibit – certainly what purports to be a copy of the exhibit in the book put before the court – is plainly incomplete. The mortgage sale agreement records an agreement for the sale of "*the Mortgage Assets*" and "*the Underlying Loans*" and provides for the execution of "*the Transfer Documents on the Completion Date".* It is not said that the agreement for sale was completed but I suppose that there is sufficient evidence of this in the registration on the folio of the transfer of the charge to Beltany. This might have been sufficient evidence of the entitlement of Beltany to appoint a receiver but it is not in my view evidence of the entitlement of AIB Mortgage Bank to have done so.

48. The defendant asserts that she has not had notice of assignment of the loan and security from Allied Irish Banks plc to AIB Mortgage Bank or from either Allied Irish Banks plc or AIB Mortgage Bank to Beltany, and no such notice of assignment has been exhibited. Notice of Assignment would be a prerequisite to any action by Beltany to recover the loans but it is not required to novate the appointment of the receiver which (if his appointment in the first place had been duly established) was done by the deed of novation.

49. In my view, it has not been established by the evidence that AIB Mortgage Bank was entitled to appoint the plaintiff. For the avoidance of any conceivable doubt I do not say that the plaintiff's appointment was invalid, merely that it has not been sufficiently proved by the evidence offered in support of this application.

50. On the applications before Costello and Baker JJ. in January, 2018 there was clear evidence that the defendant was obstructing the plaintiff in his attempts to manage the Limerick property as well as interfering with the tenants' entitlement of peaceful possession of that house. In view of what the defendant was doing in Limerick, it was perfectly reasonable for the plaintiff to apprehend that she would interfere with the management of the Muckross property, but the evidence as to whether she did or not is extremely thin.

51. The substantive claim in these proceedings is a claim for permanent injunctions requiring the defendant to give up possession and restraining her from impeding or obstructing the receivership. To make out his case to be entitled to that relief the plaintiff would need to go further than establishing the validity of his appointment. He would need to show that the defendant had wrongfully withheld possession and/or threatened or intended to obstruct or interfere with the discharge by him of his functions. In view of what happened in Limerick, I would not have been in the slightest surprised if there had been evidence of obstruction or interference in Muckross but in my view there isn't any.

52. The defendant and her husband had notice of the appointment of the plaintiff. They disputed the validity of that appointment and of the transfer of their loans and mortgages. About a month after the plaintiff had issued a motion for an interlocutory injunctions and four days before that motion was listed for hearing, the plaintiff's agent arrived at the Muckross property, without notice, to change the locks and shut off the water. It was inevitable that there would be an altercation. The evidence is that the lock was changed and a set of keys given to the guest who was staying in the house. The report of Mr. Lennox does not say so but I think he must surely have kept a set of keys. If I had evidence that the keys given to the guest had made their way into the possession of the defendant who had resumed possession of the house, I would not have been a bit surprised: but I have no such evidence.

53. The Muckross property is a holiday house in a managed scheme which is offered for short lettings to holiday makers. I have no evidence as to what income it generates or what the management charges might be. I have no evidence of the plaintiff's intentions as to what he might do with the house *pendente lite* if the court were to make the orders now sought. The fact that Mr. Lennox was sent down to shut off the water rather suggests that it was not the plaintiff's intention to let it. If it was the plaintiff's intention to let the house, he presumably would need to agree terms with the managers of the holiday village. There is no evidence that he has attempted to do that.

54. There is no evidence of the value of the Muckross property. By reference to the letter of loan offer, it appears to have been bought by the defendant and her husband in 2005 for about €280,000 of which €211,000 was borrowed. By contrast with many of these cases, there is no suggestion that the house is worth less than the amount outstanding on the loan.

55. In this case there is no clear evidence as to the amount said to be outstanding on the loan. Mr. O'Sullivan deposed to a demand made on 23rd May, 2016 for repayment of a total sum of €445,103.84 said to have been the total sum due and owing at that date, and that all sums due and owing under the loan facilities were, as of the date of swearing of his affidavit, owing to Beltany. He did not say how much. The letters of demand were written by solicitors on behalf of AIB Mortgage Bank and called for repayment of a combined sum in respect of both the Limerick and the Muckross loans. There was not then and there is not now any indication as to how much is owed on each of the loans.

56. Even if I am wrong in the view I take of the evidence as to what has happened in relation to the Muckross property and I am to infer from all the circumstances that it is likely that the defendant has changed the locks again and is in receipt of whatever rent that house is generating, it seems to me that I could not conclude that damages would not be an adequate remedy without some evidence that the house will not eventually realise enough to pay off the mortgage.

57. The covenant in both mortgages is for the payment of all sums due, so that *prima facie* at least, each of the Limerick and Muckross properties stands as security for both loans. Even if I were to look at the combined debt and could discern what it now is, any assessment of the adequacy of damages would entail an assessment of the value of each and both properties. There is no evidence as to the value of the Limerick property, either.

58. On the evidence, I am driven to the conclusion that the plaintiff has not sufficiently made out the case that he is entitled to possession of the Muckross property.

59. If I am wrong in that, I do not believe that the plaintiff has established that damages would not be an adequate remedy.

60. For these reasons I must refuse the plaintiff's motion.