

THE HIGH COURT

CIRCUIT APPEAL

[2016 No. 49 CA]

BETWEEN

HAVEN MORTGAGES LTD

PLAINTIFF

AND

PATRICK (OTHERWISE PAT) KEOGH

DEFENDANT

JUDGMENT of Mr. Justice Noonan delivered on the 24th day of October, 2017

1. This is an appeal brought by the defendant from an order of the Circuit Court (his Honour Judge O'Kelly) made in Limerick on the 6th October, 2015, granting possession of the lands and premises comprised in Folio 16925F Plan BHDx7 of the Register of Freeholders, County of Limerick.

2. By a loan agreement made on the 20th October, 2008, a sum of €255,000 was advanced by the plaintiff to the defendant. The defendant is a registered owner of the lands comprised in Folio 16925F and on the 11th November, 2008, the parties entered into a deed of charge over the said folio in respect of the loan facility. The property is described in the deed of charge as all that and those that part of the property contained in Folio 16925F County Limerick contained in Plan BHDx7 more commonly known as Ballintaw, Athlacca, Kilmallock, County Limerick. The charge was registered as a burden on the Folio on the 13th November, 2008, it being noted that the charge affects the part of the property known as Plan No. BHDx7 only.

3. The defendant defaulted in making the repayments due on foot of the loan agreement and ultimately on the 16th October, 2013, the plaintiff demanded repayment of the outstanding sums due and possession of the premises. It is important to note that it has never been disputed by the defendant that the sums claimed in these proceedings were advanced in the manner alleged by the plaintiff.

4. The within Civil Bill for possession was issued by the plaintiff on the 10th December, 2013. At para. 2 of the endorsement of claim, it is pleaded that:

"The defendant is a gentleman and resides at Ballintaw, Athlacca, County Limerick."

5. The Civil Bill also claims that the rateable valuation of the property is under €253.

6. In the affidavit originally grounding the application for possession before the County Registrar and subsequently the Circuit Court sworn by Paula Duffy on behalf of the plaintiff on the 28th November, 2013, Ms. Duffy avers that the defendant resides at Ballintaw, Athlacca, County Limerick. She avers that as of the date of swearing of the affidavit, the total due by the defendant amounted to €304,186.73 of which the arrears comprised €59,215.38.

7. The matter ultimately came on for hearing before the County Registrar on the 2nd January, 2015, when an order for possession was granted. The defendant appealed that order to the Circuit Court and the Circuit Court affirmed the order for possession on the 6th October, 2015. It would appear that the order originally made by the County Registrar incorrectly referred to the entirety of the lands comprised in Folio 16925F whereas the order of the Circuit Court confined the possession order to that part of the lands comprised in Plan BHDx7.

8. In all of the affidavits sworn by the defendant in connection with these proceedings and in all of the court documents filed by him, he gives his place of abode as "Ballintaw, Athlacca, County Limerick." In the replying affidavit sworn by the defendant in respect of this appeal on the 3rd February, 2017, pursuant to leave granted by this court by order of the 30th January, 2017, the defendant avers at para. 23 that the possession order previously made herein by the Circuit Court "on my dwelling remains void".

9. In his submissions he repeatedly referred to the fact that the property in issue in these proceedings is a domestic premises.

10. It is therefore clear from all of the evidence before the court that the property the subject matter of these proceedings is the defendant's dwelling and he resides there. There is no evidence before the court that the defendant has any other place of residence.

11. The Land and Conveyancing Law Reform Act, 2013 was commenced in July of that year, some five months before the Civil Bill herein was issued. Section 3 of that Act provides:

"3. (1) This section applies to land which is the principal private residence of—

(a) the mortgagor of the land concerned, ...

and the mortgage concerned was created prior to 1 December 2009.

(2) Subject to subsection (4), proceedings brought by a mortgagee seeking an order for possession of land to which the mortgage relates and which land is land to which this section applies shall be brought in the Circuit Court.

(3) The jurisdiction of the Circuit Court to hear and determine proceedings referred to in subsection (2) where the land concerned is land to which this section applies shall be exercised by the judge of the circuit where the land or any part of it is situated."

12. The expression "principal private residence" is not defined in the Act. However, the court must give it its natural and ordinary

meaning and I am satisfied that the evidence before the court establishes clearly that the property in issue in these proceedings is the defendant's principle private residence. It accordingly follows under s. 3 of the Act of 2013 that not only had the Circuit Court jurisdiction to entertain this claim but the Circuit Court was in fact the only court where these proceedings could appropriately have been commenced.

13. Arguments were addressed to the court in the course of the hearing of this appeal by both parties on the issue of jurisdiction of the Circuit Court by reference to the rateable valuation of the property. However, having regard to the conclusion I have reached on the jurisdiction of the Circuit Court pursuant to s. 3, it is unnecessary to consider these arguments.

14. The defendant also made a number of submissions concerning the affidavits relied upon by the plaintiff in support of its application herein. Insofar as I understand these submissions, the defendant's complaint appears to be that the plaintiff's deponents are employed by more than one employer although those employers include the plaintiff. In reality, all of the companies for which the deponents work are within the AIB Group including the plaintiff herein. I am satisfied that there is no substance in the defendant's complaints about the reliability of the evidence given by these deponents.

15. For these reasons I am satisfied that the order made by the learned Circuit Court judge was perfectly correct and I accordingly affirm that order and dismiss the defendant's appeal herein.