

BETWEEN

IRISH LIFE & PERMANENT PLC T/A PERMANENT TSB AND CHELDON PROPERTY FINANCE LIMITED

PLAINTIFFS

AND

JERRY BEADES

DEFENDANT

EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 24th day of May, 2019

1. The first named plaintiff, ("Permanent TSB") was granted an order for possession of Nos. 2, 3 and 4 Fairview Avenue, Dublin, following the judgment of McGovern J. delivered on 25th February, 2014, [2014] IEHC 81. More specific descriptions of the properties are set out in the perfected order.

2. No issue was raised by counsel for the defendant ("Mr. Beades") in relation to the changes of name of Permanent TSB. Any such attempt would have been futile in any event.

3. It is noted also that the Supreme Court determined on 6th October, 2016, that it would not hear the appeal of Mr Beades from the judgment and order of McGovern J.

4. The defendant was notified of the transfer of the relevant loan facility and mortgage in October 2015, to Cheldon Property Finance Limited. Mr. Beades' appeal from the order of McGovern J. had not been determined at that stage and Cheldon Property Finance Limited had then an interest in the appeal.

5. The Court of Appeal, by the order of 17th October, 2016, granted the application to join Cheldon Property Finance Limited as an additional named plaintiff respondent in that appeal on condition that if Mr. Beades was unsuccessful in his appeal, he would not have to incur additional costs as a result of that addition. The title of these proceedings was therefore altered by the Court of Appeal which dispensed with the necessity to reserve these proceedings upon the defendant who then appeared before the Court of Appeal as a lay litigant. The fact that the Courts Service of Ireland website does not reflect the change in the title of the proceedings arising from the order made by Court of Appeal, does not avail Mr Beades. The title to these proceedings were altered by that order.

6. On 19th September, 2016, the Registrar of Companies certified that Cheldon Property Finance Limited converted to Cheldon Property Finance Designated Activity Company which is now the applicant to this motion before the Court and this Court now refers to it as "**Cheldon**".

7. On Monday, 13th November, 2017, the Court of Appeal which heard Mr. Beades in person, counsel for Permanent TSB and counsel for Cheldon:-

(i) refused an application by Mr. Beades about the composition of that court;

(ii) refused to adjourn the hearing of the full appeal to allow Mr. Beades to apply to the Supreme Court for leave to appeal the said refusal about the re-composition of the Court of Appeal; and

(iii) dismissed the appeal of Mr. Beades from the judgment given on the 25th February, 2014 and order made on the 6th March, 2014.

8. The submission by Mr. Dixon, counsel for Mr. Beades today, that Mr. Beades has "*no indication*" about the notification of Permanent TSB of these applications today is characterised by counsel for Cheldon as "*ludicrous*". Counsel related the submissions made on the instructions of Mr. Beades to the levels to which Mr. Beades will stoop to frustrate the orders for possession which have been granted and affirmed after exhausting attempts by Mr. Beades to use the processes provided for by the rules of court. The "*level of interference*" was described as a form of "*legal terrorism*".

9. This Court is not impressed with the submissions for Mr. Beades that Permanent TSB ought to have been notified of this application or consented to same. Mr. Beades ignores the letter dated 15th October, 2015, which he received from Permanent TSB that confirmed the transfer "by way of absolute assignment" of the facilities and security to Cheldon. Furthermore, no consideration was had to the effect of the Court of Appeal order.

What are these applications?

10. The first is an application pursuant to O. 17, r. 4 of the Rules of the Superior Courts naming Cheldon as the sole named plaintiff, given that Permanent TSB no longer has an interest. The proceedings and orders of this Court should now accurately reflect the true position given the transmission of interests and conversion of Cheldon pursuant to the Companies Act 2014.

11. Counsel for Mr. Beades relied on the Supreme Court judgment of Denham J. in *Talbot v. McCann Fitzgerald Solicitors* [2009] IESC 25, (unreported, supreme Court, 26th March, 2009), when submitting that this Court has no jurisdiction to set aside the final judgments and orders in these proceedings.

12. There is no question that this Court is setting aside or altering the judgment or order of McGovern J. and particularly the orders of the Court of Appeal of 17th October, 2016, and 13th November, 2017, together with the certificate of re-registration of Cheldon. Cheldon is properly applying for the orders because it is desirable, if not necessary, to ensure that an execution order is proper on its face.

13. Counsel for Cheldon is correct that the judgment of Laffoy J. in *Bank of Ireland Finance Ltd v. Browne* (unreported judgment of Laffoy J., High Court, 24th June, 1996) is on all fours with the current application.

14. The point made for Mr. Beades that Permanent TSB is not on notice cannot avail him for the reasons already explained.

Liberty to issue execution

15. The second application by Cheldon is an order pursuant to O. 42, r. 24 (a) of the Rules of the Superior Courts granting Cheldon liberty to issue execution on foot of the order of McGovern J.

16. The argument made for Mr. Beades is that Cheldon is being assigned a possession order. Counsel referred to the *obiter* sentence "[w]hether you can assign part of an order without the rest seems to me at least very doubtful" at p. 1115 of the judgment of the English Court of Appeal in *Chung Kwok Hotel Co. Ltd v. Field* [1960] 1 W.L.R. 1112, to submit that the order of McGovern J. is being assigned in part. One might generously describe this as ingenious but when considered it appears as the typical wearisome attempt by Mr. Beades to delay the inevitable acting with some impunity given his significant indebtedness on the facts disclosed in the affidavits.

17. The Court deliberately rose for a little time since the hearing of this application to consider the description given of Mr. Beades' attempt to frustrate the orders for possession made so many years ago now.

18. Charleton J. in *O'Sullivan v. Ireland* [2019] IESC 33, (unreported, Supreme Court, 23rd May, 2019), delivered only yesterday, reminded everyone, at para. 40, that the Supreme Court had identified in *Talbot v. Hermitage Golf Club* [2014] IESC 57:-

"that there was a limit to the time and resources that any case could command ... judges could and, in appropriate cases, should intervene to ensure the efficient disposal of litigation. Cases should move on and judges are cloaked with sufficient authority to take such decisions as would ensure that this happened."

19. He earlier referred in para. 38 to the "*disservice to the administration of justice*" by the delays incurred in that case in efficient types of applications. Here, Mr. Beades is not making a positive application to this Court but rather resisting a rather routine procedural applications to thwart the execution of long-standing orders for possession of properties. In short, the time has come for Mr. Beades in this litigation to cease and desist his attempts to frustrate the inevitable effect of the judgment and order of McGovern J., made over five years ago, in relation to the possession of Nos. 2, 3 and 4 Fairview Avenue, Dublin.

20. There was another suggestion that the "*goodbye letter*" of 24th April, 2019, given by Cheldon to Mr. Beades relating to the intention to transfer Mr. Beades' loan "*no earlier than 24th June, 2019*" to Pepper Finance Corporation Ireland DAC should be considered by the Court as indicating that Cheldon will not ultimately be executing the judgment.

21. This is yet a further exasperating attempt on behalf of Mr. Beades to cloud and postpone the inevitable. He does himself no favours in para. 7 of his affidavit sworn on 9th May, 2019, suggesting that Whelan J. in the Court of Appeal on 13th November, 2017, had given him a point for his defence of these applications based on an alleged view expressed in Court about how to calculate the exact sum due by Mr Beades.

22. The order for possession remains and the exact sum which will be claimed ultimately by Cheldon, as mentioned at para. 33 of the grounding affidavit for this application, being "*€2,251,584.80 as of 5th March, 2019, with daily interest of €84.68 accruing*" is not for determination by this Court now.

23. In addition, the reference by Mr. Beades to negotiations with "*the plaintiffs*" at para. 20 of his said affidavit, has had no benefit for him in resisting these applications. The unnecessary mention may undermine confidence that the "*matters*" referred to by Mr. Beades "*could be resolved amicably*" (at least without independent professional representation). I make no determination on this reference by Mr. Beades in his affidavit because it is not relevant to the applications before the Court now.

24. The unsubstantiated reference to family law proceedings in Mr. Beades' affidavit was not actively pursued by his counsel and correctly so. The complaints of Mr. Beades about access to records which might be contrary to the General Data Protection Regulation is yet another grasp at an ill-considered strand which has no effect on the applications before this Court now. The affidavit of Mr. John Burke sworn on 20th May, 2019, clarified matters. The Court notes that counsel for Mr. Beades did not pursue with any vigour this unnecessary mention in the affidavit.

25. I took the time since the conclusion of the hearing of this application today to consider the concise points made by counsel for Cheldon and also to consider what this Court can and will do if called upon again to halt the senseless waste of resources by Mr. Beades acting with apparent impunity to prevent the inevitable.

26. At this stage, the following orders may be made according to the notice of motion issued on the 7th March 2019 on behalf of Cheldon.

(a) An order pursuant to O. 17, r. 4 of the Rules of the Superior Courts 1986, naming Cheldon Property Finance DAC as the sole plaintiff in these proceedings.

(b) An order pursuant to O. 42, r. 24(a) of the Rules of the Superior Courts 1986, granting the Cheldon Property Finance DAC liberty to issue execution on foot of the order of the High Court (McGovern J.) dated 6th March, 2014, and more particularly for the properties described in the schedule of the Notice of Motion which can be attached to this order.

(c) An order pursuant to O. 28, r. 12 of the Rules of the Superior Courts 1986 amending the possession order so as to name Cheldon Property Finance DAC in the place of Permanent TSB as the plaintiff in the title thereof.

After delivery of ex tempore judgment.

27. There is now an application on behalf of Cheldon for a further order to assist execution arising from the tenor of the judgment which I gave about the wasting of resources, not only those of the Court, but also those of Cheldon, and potentially of Mr. Beades, who is acting with apparent financial impunity in view of the extent of his indebtedness. I accept that Counsel for Mr Beades is not on notice and that he needs to have proper notice in relation to any application that will be made. However, the Court wants to stress that this Court will not allow its processes to be used by litigants for delaying the inevitable.

28. In that regard, therefore, I give liberty to Cheldon to issue a notice of motion returnable for Wednesday, 5th June 2019 before this Court, to be served, in accordance with the rules, on the solicitors on record for Mr. Beades as of today, if a further application is deemed necessary. The Court is not encouraging such a motion. If that liberty is not availed of by Cheldon, this Court gives liberty for Cheldon to apply at a future date to this Court because it is about time that the effect of these proceedings are brought to a

conclusion.

29. Just to clarify, the liberty granted is for the plaintiff to issue a notice of motion returnable to this Court seeking whatever relief is going to be sought before this Court at 11am on 5th June 2109. That will have to be issued and served by the end of next week. If the plaintiff does not issue such a motion, it can apply on notice in relation to matters arising later because this Court is now aware of the processes that have been adopted to date.