

**THE HIGH COURT**

**CIRCUIT APPEAL**

**EASTERN CIRCUIT COUNTY OF KILDARE**

**[EQ014/13]**

**BETWEEN**

**CON CRONIN AND ROGER KEOGH,  
JOINT STATUTORY RECEIVERS OF CERTAIN ASSETS OF  
DECLAN GARDINER, JOHN NUGENT AND TED NUGENT**

**PLAINTIFFS**

**AND**

**WILLIAM SEXTON**

**DEFENDANT**

**JUDGMENT by Mr. Justice Michael White delivered on the 19th day of February, 2016**

1. This is an appeal from an order of the Circuit Court of 8th October, 2015, dismissing the plaintiff's proceedings. The Court decided that a certificate issued pursuant to s. 108 of the National Asset Management Agency Act 2009, was not sufficient, as a loan facility letter of 26th June, 2008, which was subsequent to the execution of a Deed of Charge of 1st November, 2005, was not presented to the court.
2. The plaintiffs are joint statutory receivers appointed by the National Asset Management Agency (NAMA) pursuant to the provisions of s. 147 of the National Asset Management Agency Act 2009, (the Act) over certain specified assets of Declan Gardiner, John Nugent and Ted Nugent, being property comprised in Folio 54796F Co. Kildare comprising approximately 25 acres at Milltown Road, Newbridge, Co. Kildare.
3. By deed of mortgage/charge of 1st November, 2005, Declan Gardiner, John Nugent and Ted Nugent, charged the lands to Allied Irish Banks Plc. The charge was registered as a burden on the folio.
4. By notice of 7th December, 2010, NAMA served an acquisition schedule on AIB and acquired from AIB, the deed of charge.
5. By deed of appointment of 22nd August, 2012, the plaintiffs were appointed statutory receivers of the assets of the borrowers secured by the deed of charge.
6. The defendant on 7th June, 2009, entered into a license agreement with Ted and John Nugent at an annual fee of €4,200.
7. The defendant has already conceded possession of the property to the plaintiffs and the only outstanding issue is a claim for damages.
8. The issue before the court is the sufficiency of the relevant section of the National Asset Management Agency Act 2009.
9. Section 108 states:-
  - "(1) NAMA or a NAMA group entity may certify under its seal or common seal, as the case requires, that NAMA or the NAMA group entity holds a bank asset specified in the certificate.
  - (2) A document purporting to be a certificate issued in accordance with subsection (1) –
    - (a) shall be taken to be such a certificate, and to have been certified under the seal of NAMA or the NAMA group entity, as the case may be, unless the contrary is proved, and
    - (b) is conclusive as to the matters set out in it."
10. The section states that the certificate issued pursuant to s. 108 of the Act is conclusive as to the matters set out in it.
11. There was no onus on the plaintiffs to adduce the loan facility letter of 26th June, 2008, between the borrowers for the one part and AIB Plc of the other part, notwithstanding the fact that the loan facility issued subsequent to the execution of the deed of charge.
12. Once the certificate was adduced in evidence, the onus shifted to the defendant to establish his claim to remain on the lands or resist any claim for damages.

13. The learned Circuit Court judge pursuant to the provisions of s. 108 of the National Asset Management Agency Act 2009, was obliged to accept the certificate of 22nd April, 2015, issued under the Act to certify that National Asset Loan Management Limited had acquired the relevant assets.

14. It was open to the defendant to adduce any evidence he wished to contradict the evidence adduced by the plaintiffs, but once the certificate issued under s. 108 of the National Asset Management Agency Act 2009, and was duly proved, the onus of proof shifted to the defendant.