

THE HIGH COURT

[2014/78Sp]

BETWEEN

QUINNS OF BALTINGLASS LIMITED

PLAINTIFF

AND

JIM SMITH AND JUNE SMITH

DEFENDANTS

JUDGMENT of Mr Justice David Keane delivered on the 11th day of July 2017**Introduction**

1. This is a mortgage suit, commenced by the issue of a special summons on 14 February 2014. The plaintiff ('Quinns'), a grain and agricultural supplies merchant in Baltinglass, County Wicklow, seeks declarations that the monies secured by three judgment mortgages registered by it against the interest of the first defendant, Mr Smith, in various lands comprised in several specified folios in the Register of Freeholders in County Laois stand well-charged against that interest in those lands, together with various consequential orders under ss. 31 and 117 of the Land and Conveyancing Law Reform Act 2009 ('the 2009 Act'). Mr Smith is a tillage farmer. The second defendant, Mrs Smith, is the wife of the first defendant and joint owner with him of certain of the lands.

The plaintiff's case

2. The special summons is grounded on an affidavit of Liam Quinn, sworn on 14 February 2014. In it, he avers as follows.

3. He is a director of Quinns. In 2010, it brought an action against Mr Smith for the price of goods sold and delivered to the value of €292,632.69, together with interest. That action was entitled '*The High Court, Record No. 2010/953S, Quinns of Baltinglass Ltd, plaintiff, and Jim Smith, defendant.*' By Order of the Master of the High Court made on 12 October 2010 in those summary proceedings, Quinns obtained liberty to enter judgment against Mr Smith in that amount, together with interest at the relevant rate under the Courts Act 1981 to run from 1 March 2010. By Order of this Court, made on 22 November 2010, de Valera J dismissed Mr Smith's appeal against the Master's Order. Judgment was entered on foot of the Master's Order on 5 May 2011. Quinns agreed to waive its claim to interest on the judgment for the period between 15 February and 5 May 2011. An Order of Execution (*Fieri Facias*) in the sum of €315,209.50 issued on 5 May 2011, comprising the principal sum of €292,632.69, together with interest from 1 March 2010 to 15 February 2011- a period of 352 days – at an annualised rate of 8% (being €64.14 per day, and totalling €22,513.44 for that period).

4. Interest continued to accrue on the principal sum at that daily rate until, on or about 15 September 2011, a further €8,466.48 in interest having accrued to that date, Mr Smith provided a partial repayment in grain to the value of €54,677.09. That reduced the principal sum due to one of €237,955.60. The daily interest rate on that sum was €52.15. Mr Smith made no further repayments and, as of 2 February 2016, the aggregate sum due and owing was €352,446.16, being the principal sum just mentioned, together with a further €114,490.50 that had accumulated in interest to that date.

5. Mr Smith is full owner of the lands comprised in Folios 5608, 7726, 28061F, 5548 and 30277F of the Register of Freeholders in the County of Laois. Those properties comprise agricultural land and do not include the defendants' residence.

6. The defendants are full owners of the lands comprised in Folios 503, 12894F, 16260F and 16605F of the Register of Freeholders in the County of Laois. Those properties also comprise agricultural land and do not include the defendants' residence. I pause here to note that, as addressed in greater detail later in this judgment, each of the defendants has averred that, to the contrary, the lands comprising Folio LS16260F represent their family home (or principal private residence) and that the said property is landlocked within the lands comprising Folio LS12894F, such that the retention of both properties is necessary to the continued occupation and enjoyment of their home or residence by the defendants and their children.

7. The relevant judgment mortgage affidavits of Kathleen Quinn, secretary of Quinns, are the following:

(i) An affidavit sworn on 7 September 2011 and filed on or about that date in respect of Mr Smith's interest in the lands comprised in Folios 503, 12894F, 16260F and 16605F of the Register of Freeholders in the County of Laois.

(ii) Affidavits sworn on 9 October 2012 and 19 August 2013 and filed on or about those dates in respect of Mr Smith's interest in the lands comprised in Folios 5548, 5608 and 28061F of the Register of Freeholders in the County of Laois.

(iii) Affidavits sworn on 27 September 2012 and 19 August 2013 and filed on or about those dates in respect of Mr Smith's interest in the lands comprised in Folio 7726 of the Register of Freeholders in the County of Laois.

(iv) An affidavit sworn on 23 December 2013 and filed on or about that date in respect of Mr Smith's interest in the lands comprised in Folio 30277F of the Register of Freeholders in the County of Laois.

8. As the relevant entries in the Land Registry for County Laois attest, judgment mortgages were registered in favour of Quinns in respect of the said judgment in the Register of Freeholders in the County of Laois: over the properties comprised in Folios 503, 12894F, 16260F, and 16605F on 18 January 2012; over the properties comprised in Folios 7726, 5558, 5608 and 28061F on 11 September 2013; and over the property comprised in Folio 30277F on 15 January 2014.

9. Despite repeated demands, Mr Smith has failed, refused or neglected to pay the sum due and owing on foot of the said judgment. Quinns now seeks to enforce its judgment and, to that end, seeks the necessary well-charging orders, together with the appropriate orders for an account and inquiry, and for payment of the sum now due and owing or, if necessary, the sale of the said lands.

The defences put forward by Mr Smith

10. Mr Smith swore a replying affidavit on 12 May 2014. In it, he opposes the grant of the relief sought on the following principal grounds.

11. First, he avers that the lands comprising each of the folios of which he is the sole legal owner, other than Folio 7726, have been charged in favour of a financial institution for sums that exceed the value of those lands, and that the lands comprising each of the folios that he owns jointly with Mrs Smith are charged in favour of another financial institution to the same extent. Mr Smith further deposes that he is in dispute with the first financial institution concerning its purported appointment of a receiver over the lands charged in its favour and that he is, for all practical purposes, insolvent. Thus, he avers, he cannot discharge the principal or interest on Quinns' judgment against him. Apart from these bare averments, Mr Smith has not provided a statement of means or any of the evidence necessary to allow those assertions to be tested.

12. In a further affidavit, sworn on 22 July 2014, Mr Quinn avers that, while Quinns accepts that the relevant lands are encumbered by the charges described, it does not accept that the sums charged exceed the value of those lands. It asserts that, in any event, the existence of antecedent charges is no impediment to a well charging order or an order for sale. It further notes that the lands comprised in Folio 7726 are not encumbered.

13. Second, Mr Smith avers that the lands in Folio LS16260F comprise the family home of the defendants and that the said folio is, in effect, landlocked within the lands comprised in Folio LS12894F. Mr Smith further avers that the lands in the latter folio comprise, in whole or in large part, the curtilage of the said dwelling house, so that those two folios together represent the defendants' family home. This claim is repeated in a separate affidavit sworn by Mrs Smith on 17 November 2014. In his replying affidavit, Mr Quinn takes issue with that claim in relation to the appurtenant lands comprising Folio LS12894F but appears to concede it (by implication) regarding the lands comprising Folio LS16260F.

14. Third, the defendants assert that Mrs Smith should not have been joined as a defendant to the action, as Quinns holds no judgment against her. This complaint is reiterated in an affidavit sworn by Mrs Smith on 17 November 2014. In his replying affidavit, Mr Quinn asserts that it was appropriate to join Mrs Smith as a defendant in the proceedings to enable her to be heard because, with Mr Smith, she is the co-owner of certain of the lands which are the subject of these proceedings.

15. Fourth, Mr Smith avers that the judgment mortgage affidavits exhibited by the plaintiff are not properly admissible in evidence, as each contains unspecified 'additional matter by way of marking and interlineation, which has not been signed or initialled in compliance with the rules and practice of the Court.' Quinns denies that claim.

16. Finally, Mr Smith avers that the present action has not been brought as a genuine attempt to recover the debt due to Quinns but, instead, simply to cause extreme financial embarrassment to the defendants in the pursuit of some – again, unspecified – ulterior advantage. Quinns rejects that claim.

The position of Mrs Smith

17. Mrs Smith appeared at the trial of the proceedings as a litigant in person, assisted by a McKenzie friend with the approval of the court. In that context, she sought to rely on an affidavit that she had sworn on 1 February 2016 and produced in court. Quinns did not object, save insofar as that affidavit might contain any scandalous material and, accordingly, the second defendant was given liberty to file it in court.

18. In that affidavit, Mrs Smith avers that she never had a contractual relationship of any kind with Quinns and was not a party to the summary judgment proceedings that it brought against Mr Smith. That much is not in dispute.

19. Nonetheless, Mrs Smith then proceeds to depose to her understanding of the commercial dealings between Mr Smith and Quinns from 2004 onwards, focussing on certain transactions on various dates between 2006 and 2009, and exhibiting selected account statements from that period. Mrs Smith's purpose in doing so is to allege that Mr Smith's account was not correctly, or sufficiently promptly, credited by Quinns for grain he had delivered and that, in consequence, he was overcharged interest on that account.

20. Mrs Smith variously describes this alleged conduct on the part of Quinns as involving 'innaccurate accounting practices', 'misleading accounting practices', 'deliberate late payment', 'false accounting', 'false representations' and 'fraudulent misrepresentation' in its dealings with Mr Smith. While Mrs Smith makes repeated references to the terms and conditions of the relevant contract between Quinns and Mr Smith, the relevant terms and conditions are not set out (or, as lawyers would say, particularised) and the contract is not exhibited. There is, accordingly, no evidence before the Court concerning the basis upon which Quinns was to apply credits and interest charges to Mr Smith's account. Similarly, while Mrs Smith exhibits a selection of what appear to be account statements and grain supply statements issued by Quinns to Mr Smith, the basis upon which those statements suggest, much less establish, that credits for grain deliveries were tardily or incorrectly applied is far from clear. Mrs Smith simply invites the court to accept her view that that is what occurred.

21. Mrs Smith purports to exhibit to the said affidavit a separate affidavit, sworn on 1 February 2016, by one Michael Kinsella, who avers that he has been retained by the defendants for 'a number of years' in his professional capacity as an accountant. In the absence of any objection by the plaintiff, I allowed Mr Kinsella's affidavit to be filed in court. Mr Kinsella further avers that he has been requested by the second defendant 'to carry out a thorough analysis of the entire financial transactions between [the plaintiff] and [the first defendant] since 2006.' He does not say when that request was made.

22. The only substantive averment in Mr Kinsella's affidavit is his equivocal statement that, by reference to the evidence he does possess (presumably, the account statements exhibited to the affidavit of Mrs Smith, although that is not stated), 'it is apparent that there may be credits for product sold to [Quinns] which was not credited to the account on the date of supply.' Mr Kinsella does not address the issue of whether the terms of the contract between the plaintiff and the first defendant required product to be credited to the first defendant's account on the date of supply. Indeed, he does not refer to the terms of that contract at all. He does purport to offer a legal opinion concerning both the appropriateness of an order for discovery and the requirements of fairness in the context of the present action, which expression of opinion is beyond the scope of his stated qualifications as a chartered accountant and unsustainable as a matter of law in the circumstances of the present action.

23. Neither Mrs Smith nor Mr Kinsella makes any attempt to explain why Mr Smith – who was, after all, the relevant contracting party – did not raise this allegation at the time of any of the relevant transactions between 2006 and 2009; as a defence to the summary judgment proceedings against him in 2009/2010; as a ground of appeal in those proceedings before the High Court later in 2010; or at any time during these proceedings, although Mrs Smith does aver to Mr Smith's 'negligence' in that regard. Indeed, Mrs Smith makes no attempt to explain why, in these special summons proceedings that commenced on 14 February 2014 and in which she had already sworn affidavits on 17 November 2014 and 3 March 2015, she did not raise the allegations upon which she now seeks to rely until she put them on affidavit in the unsatisfactory form already described on 1 February 2016, the first day of the trial of the action.

24. Mrs Smith produced two other documents to the court at the commencement of the trial. The first of those was a document

headed - under the title and record number of these proceedings - 'statement of claim.' It contains, in substance, a proposed or purported counterclaim by Mrs Smith for damages against Quinns for its alleged breach of its contract with Mr Smith. I have no hesitation in concluding that such a claim by Mrs Smith is both unsustainable in law, due to her lack of standing to seek damages for the alleged breach of an agreement to which she was never a party, and procedurally impermissible, because of the manner and circumstances in which she seeks to raise it for the first time at the trial of the action, in disregard of the applicable rules of court.

25. The second additional document that Mrs Smith produced in court at trial is one entitled 'oral submission', which I understand it had been her intention to read aloud. To expedite the trial and limit the associated costs, I indicated that I would treat that document as a written submission on behalf of the second defendant and would consider it on that basis. That is what I have done.

26. In that submission, Mrs Smith contends, in summary, that justice and fairness require the consideration of the claims that she sought to raise for the first time at trial in 2016 concerning the alleged unlawful conduct of Quinns toward Mr Smith between 2006 and 2009. Mrs Smith invokes a range of Irish and English and Welsh authorities that deal with issues such as: the implications of a prior false statement in summary judgment proceedings; the requirements of natural and constitutional justice where property rights are in issue; and the effects of fraudulent misrepresentation on contractual relationships. However, for the reasons I have already given, I do not accept that the second defendant has the standing required to raise those issues or, even if she did, that she has done so reasonably or properly in accordance with the relevant rules of court.

The law

27. From the evidence before the court, I am satisfied that Quinns has registered its judgment against the relevant properties in accordance with the requirements of s. 116 of the 2009 Act.

28. Section 117 of that Act provides in material part as follows:

'(1) Registration of a judgment mortgage under *section 116* operates to charge the judgment debtor's estate or interest in the land with the judgment debt and entitles the judgment mortgagee to apply to the court for an order under this section or *section 31*.

(2) On such an application the court may make-

(a) an order for the taking of an account of other incumbrances affecting the land, if any, and the making of inquiries as to the respective priorities of any such incumbrances,

(b) an order for the sale of the land, and where appropriate, the distribution of the proceeds of sale,

(c) such other order for enforcement of the judgment mortgage as the court thinks appropriate.

(3) The judgment mortgage is subject to any right or incumbrance affecting the judgment debtor's land, whether registered or not, at the time of its registration.'

29. Section 31 of the 2009 Act provides in material part:

'(1) Any person having an estate or interest in land which is co-owned whether at law or equity may apply to the court for an order under this section.

(2) An order under this section includes-

(a) an order for partition of the land amongst the co-owners,

(b) an order for the taking of an account of incumbrances affecting the land, if any, and the making of inquiries as to the respective priorities of any such incumbrances,

(c) an order for sale of the land and distribution of the proceeds of sale as the court directs,

(d) an order directing that accounting adjustments be made as between the co-owners,

(e) an order dispensing with consent to severance of a joint tenancy as required by *section 30* where such consent is being unreasonably withheld,

(f) such other order relating to the land as appears to the court to be just and equitable in the circumstances of the case.

(3) In dealing with an application for an order under *subsection (1)* the court may-

(a) make an order with or without conditions or other requirements attached to it, or

(b) dismiss the application without making any order, or

(c) combine more than one order under this section.

(4) In this section-

(a) "person having an estate or interest in land" includes a mortgagee or other secured creditor, a judgment mortgagee or trustee,

Analysis

30. Mr Smith's implicit argument that Quinns should not be granted the relief that it seeks against him because he considers himself to be 'for all practical purposes' insolvent, and because the lands concerned are subject to antecedent charges in favour of certain financial institutions, cannot prevail for two reasons. The first is that Mr Smith has provided little or no evidence concerning his means with the result that his asserted inability to discharge the debt due to Quinns simply cannot be assessed. The second is that, as Denham J made clear in *First National Building Society v Ring* [1992] 1 IR 375 (at 380), even if it proves to be the case that Mr Smith's interest in the proceeds of sale of the properties charged will not meet his debts, that is not a valid reason to refuse an order for sale of those properties.

31. The position is clearly explained in the following passage in Wylie, *Irish Land Law*, 5th edn (Dublin, 2013) (at para. 15.22):

'Like any mortgagee, a judgment mortgagee may seek a well-charging order and further relief (such as a sale of the property) even though there are prior mortgages or other incumbrances affecting the judgment debtor's land. The point is that it is standard court procedure to require, on an application for well-charging relief, the taking of an account of other incumbrances on the land and the making of inquiries as to their priorities. In fact, this procedure is specifically recognised in the case of judgment mortgages by [s. 117(2)(a) of] the Land and Conveyancing Law Reform Act 2009. It ensures that, before the court makes any order for relief, it is aware of all the claimants secured on the land, so that, if an order for sale is made, the proceeds will be distributed strictly according to the priorities of the respective incumbrancers. For this reason, although the judgment mortgagee may succeed in obtaining a well-charging order and relief such as an order for sale, he may not succeed in having his debt discharged fully, or even at all, out of the proceeds of sale.' (footnotes omitted)

32. The second argument advanced by both defendants in opposition to an order for sale relates specifically to the lands comprising Folio LS16260F and Folio LS12894F, which they contend represent their principal private residence or family home. In their affidavits, the defendants appear to suggest that, by operation of the Land and Conveyancing Law Reform Act 2013 ('the 2013 Act'), the Court has no jurisdiction to deal with these proceedings in relation to that property. This argument, which appears to be based on the terms of s. 3 of the 2013 Act, was expressly abandoned by Counsel on behalf of Mr Smith at the trial of the action. Section 3 of the 2013 Act provides that proceedings brought by a mortgagee seeking possession of land which is the principal private residence of the mortgagor or of a person without whose consent a conveyance of that land would be void by reason of, for example, the Family Home Protection Act 1976 must be brought in the Circuit Court. However, as the terms of that section make plain, it applies only to mortgages that were created prior to 1 December 2009. It follows that the jurisdiction of this Court to hear and determine the present action is unaffected by that provision.

33. Three of the other arguments raised by Mr Smith can be very shortly dealt with.

34. The first is that the judgment mortgage affidavits exhibited by the plaintiff are not properly admissible in evidence, as each contains unspecified 'additional matter by way of marking and interlineation, which has not been signed or initialled in compliance with the rules and practice of the Court.' Mr Smith does not identify the marking(s) or interlineation(s) that he is referring to and the issue was not pressed by his Counsel at trial. Certain of the copy affidavits in the papers produced to the Court have some folio numbers underlined by hand and the copy affidavit sworn on 27 September 2012 contains the handwritten word 'error' beside the third paragraph, in which the number of one of the relevant folios is given as '5548F' and that number is twice underlined by hand. It may well be that this was why a further affidavit was sworn on 19 August 2013 in broadly identical terms, reciting the folio number in question as '5548.' In so far as any of the marks I have described amount to an interlineation upon, or alteration of, any of the said judgment affidavits, I can see no reason not to grant leave to permit such affidavit to be filed, read and made use of, pursuant to the terms of O. 40, r. 13 of the Rules of the Superior Courts ('RSC'). Were it necessary, and I do not believe it is, I would apply the provisions of O. 124, r. 1 of the RSC to forgive whatever non-compliance with the rules these very limited marks might represent, as I fail to see how any of them in any way alters or affects the evidence represented by the relevant averments in the affidavits concerned.

35. The second such argument is that Mrs Smith should not have been joined as a defendant to these proceedings because Quinns does not have a pecuniary claim against her. However, Quinns submits that it joined Mrs Smith as a defendant to the proceedings to enable her to defend her interests as co-owner of certain of the properties in respect of which orders are sought against the interest of Mr Smith. This is what occurred in both *Mahon v Lawlor* [2011] 1 IR 311 and *Irwin v Deasy* [2011] 2 IR 752, with the evident approval of the court in the former case and at the direction of the court in the latter. I therefore reject that argument.

36. Third, Mr Smith argues that the present action has not been brought *bona fide* to recover a debt but, rather, for the ulterior purpose of causing embarrassment to the defendants. The evidence of Mr Smith's indebtedness is uncontroverted. Liberty to enter judgment against him in the relevant sum was granted as long ago as 12 October 2010. The greater portion of that judgment remains undischarged, despite repeated demands for payment, and interest upon it continues to accrue. There is no evidence whatsoever before the Court to suggest that the purpose behind this action is anything other than to obtain satisfaction of that debt. Accordingly, I reject that argument.

The discretion under s. 31 of the 2009 Act

37. A more significant issue is whether it is appropriate for the Court to exercise its discretion under s. 31(3) of the 2009 Act to make the various orders that Quinns seeks under s. 31(2) of that Act in relation to those properties that Mr Smith co-owns with Mrs Smith.

38. As Wylie, *Irish Land Law*, 5th edn (Dublin, 2013) explains (at para. 15.24):

'Prior to the enactment of [the 2009 Act], there were difficulties about enforcement of a judgment mortgage registered against the interest of one of several or more joint tenants.....

As regards judgment mortgages registered since 1 December 2009, [the 2009 Act] changed the position substantially. Although that Act applied the rule of no 'severance' [i.e. the rule that previously applied to unregistered land whereby a judgment mortgage registered on such land did not sever the joint tenancy; see *Irwin v Deasy* [2011] 2 IR 752] to unregistered land as well as registered land, and the principle that it created a charge only to both registered and unregistered land, it addressed directly the enforcement of a judgment mortgage against jointly-owned land. Such a judgment mortgage, whether of registered or unregistered land is entitled to invoke the wide discretionary jurisdiction conferred on the court by s. 31 of the 2009 Act.'

39. What are the principles by reference to which the court should exercise its wide discretionary power under s. 31 of the 2009 Act? Commenting, *obiter dicta*, on the terms of the section in *Mahon v Lawlor* [2011] 1 IR 311 (at 323), Finnegan J stated:

'Thus the Act of 2009 confers upon a judgment creditor the right to apply for any of the orders mentioned in s. 31(2). It would be of assistance to those called upon to advise judgment creditors and judgment debtors and indeed to the courts if the Act of 2009 gave guidance as to the basis upon and circumstances in which the courts will exercise the discretion conferred by s. 31(3). In the absence of such guidance the circumstances in which, for example, a judgment creditor will be granted or refused an order for sale must wait the development of jurisprudence on a case by case basis.'

40. And later (at 324), Finnegan J added:

'Section 117 does not make any clearer the provisions of s. 31 as to the basis upon and circumstances in which the courts should exercise the discretion conferred. For this reason it is to be regretted that the opportunity presented by the Act of 2009 of clarifying fully the reliefs and remedies available to a judgment creditor for the benefit of both the judgment creditor and the judgment debtor was not availed of by the legislature.'

41. Several principles in relation to the basis upon which the s. 31(3) discretion must be exercised have now been identified by the Court of Appeal in *Muintir Skibbereen Credit Union v Crowley* [2016] IECA 213. They can be found set out at paragraphs 24 to 35, inclusive, of the judgment of Hogan J (Peart and Irvine JJ, concurring) in that case. The principles considered are those which must apply where an order for sale is sought in respect of a family home.

42. As a concession during the trial of the action, Quinns indicated that, while it still seeks a well-charging order in respect of the lands comprising Folio LS16260F, it is no longer seeking an order, pursuant to s. 31(2) of the 2009 Act, for the sale of that property, in recognition of the claim by Mr and Mrs Smith that it represents their principal private residence or family home. However, Quinns is maintaining its claim for an order for the sale of the other lands at issue, including the lands comprising Folio LS12894F. Quinns contends that the defendants' claim that the lands in that folio also comprise part of the curtilage of their family home is no more than a bare assertion, which strains credulity. Quinns submits that, even if the former folio were effectively landlocked within the latter, 'it is impossible to conceive' why the retention of an appropriate easement over the lands comprised in Folio 12894F would not protect the defendants' interest in what they assert is their family home.

43. The judgment on appeal in *Muintir Skibbereen Credit Union* was delivered after I reserved judgment in the present action and, accordingly, neither side had an opportunity to deal with it in argument. In consequence, I will confine myself to the observation that the concession made by Quinns - in abandoning its claim to an order for the sale of the property comprising Folio LS16260F - was a sensible and appropriate one.

44. Quinns submits, and the court accepts, that the position concerning the lands co-owned by the defendants as joint tenants, other than the family home, is fundamentally different.

45. The question that must be considered is the one identified by Dunne J in *Drillfix Ltd v Savage* [2009] IEHC 546 (albeit there in the context of an application for an order for sale in lieu of partition under the Partition Acts 1869-1876), namely 'whether the defendants or either of them has shown a good reason such that this court should not direct a sale of the premises.' Laffoy J reached the same conclusion, *obiter*, in *Irwin v Deasy* (at 767), i.e. that the onus is on the defendant to satisfy the court that a good reason exists for not ordering a sale. That does seem to me to be the essential question, once the court is satisfied, as in this case, that the proofs necessary for the grant of such relief are otherwise in order.

46. Laffoy J went on to point out in *Irwin v Deasy* (at 767) that matters which would fall for consideration if the lands at issue were a family home, do not arise where those lands are instead used for commercial or farming purposes. In so far as the defendants have sought to argue - in a roundabout way - that, in considering whether good reason exists for not ordering a sale, the court should consider what other options, less prejudicial to the defendants, are open to Quinns to enforce its security, it seems to me that the problem here is the same as that identified by Laffoy J in that case; namely, that Mr Smith has failed to provide any evidence to the Court concerning his means; the value of the lands; and the value of the debts charged as security over the lands, beyond the bare assertion that he is 'practically insolvent' and that the debts charged on the lands match or exceed their value. In those circumstances, even if the approach suggested is the appropriate one, it is impossible to conclude that Mr Smith has discharged the onus of proving that there is good reason why the sale of the lands, other than the family home, should not be ordered.

Conclusion

47. For the reasons given, I will grant the following principal reliefs.

(i) A well-charging order over the first defendant's interest in all the lands comprising Folios 5608, 7726, 28061F, 5548, 30277F, 503, 12894F, 16260F and 16605F of the Register of Freeholders in the County of Laois.

(ii) A declaration that there is due and owing by the first defendant to the plaintiff on foot of the judgment mortgage the sum of €352,446.16 as of 2 February 2016.

(iii) An Order for the taking of an account of other incumbrances affecting the lands comprising Folios 5608, 7726, 28061F, 5548, 30277F, 503, 12894F, 16260F and 16605F of the Register of Freeholders in the County of Laois, and the making of inquiries as to the respective priorities of any such incumbrances.

(iv) An Order for an inquiry as to the persons interested in the lands and premises comprising Folios 5608, 7726, 28061F, 5548, 30277F, 503, 12894F, 16260F and 16605F of the Register of Freeholders in the County of Laois, their shares and proportions.

(v) An Order for an inquiry as to whether any right of way or easement over the lands comprising Folio LS12894F, as subservient tenement, is necessary for the reasonable occupation and enjoyment of the lands comprising Folio LS16260F, as dominant tenement, in order to permit reasonable access to the public roadway.

(vi) An Order for payment of the said sum due and owing to the plaintiff by the first defendant within 28 days.

(vii) Failing such payment within that period, an Order, pursuant to s. 31(2)(c) of the 2009 Act, for the sale of the lands comprising Folios 5608, 7726, 28061F, 5548, 30277F, 503, 12894F and 16605F of the Register of Freeholders in the County of Laois and for the distribution of the proceeds as the Court directs.

(viii) Liberty to re-enter, if necessary, to seek an Order for the sale of the lands comprising Folio LS16260F.

48. I will hear the parties on the specific form the necessary order should take and on the appropriate ancillary orders to reflect the terms of the court's judgment.