

Between:**Bank of Ireland Mortgage Bank****Plaintiff****– and –****John O'Connor and Lorna O'Connor****Defendants****JUDGMENT of Mr Justice Max Barrett delivered on 3rd May, 2019.**

1. Bank of Ireland Mortgage Bank seeks summary judgment in respect of a loan facility for €1.5m+ taken out in or about 2008 and, *inter alia*, secured on a family home in Clontarf. Separately it has issued Circuit Court possession proceedings in respect of that home. The principal relief now sought by the O'Connors is an order pursuant to O.49, r.7, RSC and/or the inherent jurisdiction of the court remitting these High Court proceedings to the Circuit Court with unlimited jurisdiction. In the course of hearing the court was referred to the text of s.25 of the Courts of Justice Act 1924, s.11(2) of the Courts of Justice Act 1936, s.22(1) of the Courts (Supplemental Provisions) Act 1961, s.17(b) of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, and O.49, r.7 RSC.

2. Section 25 of the 1924 Act provides as follows:

"When any action shall be pending in the High Court which might have been commenced in the Circuit Court, any party to such action may, at any time before service of notice of trial therein, apply to the High Court that the action be remitted or transferred to the Circuit Court, and thereupon, in case the court shall consider that the action is fit to be prosecuted in the High Court, it may retain such action therein, or if it shall not consider the action fit to be prosecuted in the High Court it may remit or transfer such action to the Circuit Court or (where the action might have been commenced in the District Court) the District Court, to be prosecuted before the Judge assigned to such Circuit or (as the case may require) the Justice assigned to such District, as may appear to the High Court suitable and convenient, upon such terms, in either case and subject to such conditions, as to costs or otherwise as may appear to be just: Provided that the High Court shall have jurisdiction to remit or transfer any action, whatever may be the amount of the claim formally made therein, if the court shall be of opinion that the action should not have been commenced in the High Court but in the Circuit Court or in the District Court if at all."

3. Section 11(2) of the 1936 Act provides, *inter alia*, as follows:

"Notwithstanding anything contained in section 25 of the Principal Act [the Act of 1924] the following provisions shall have effect in relation to the remittal or transfer of actions under that section, that is to say... (b) an action for the recovery of a liquidated sum shall not be remitted or transferred under the said section unless the plaintiff [I] consents thereto or the defendant [II] either [i] satisfies the High Court that he has a good defence to such action or some part thereof or [ii] discloses facts which, in the opinion of the High Court, are sufficient to entitle him to defend such action." [Emphasis added].

4. Section 22(1) of the 1961 Act provides, *inter alia*, as follows:

"(a) Subject to paragraphs (b) and (c) of this subsection, the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine any proceedings of the kind mentioned in column (2) of the Third Schedule to this Act at any reference number.

(b) Unless the necessary parties to the proceedings in a cause sign, either before or at any time during the hearing, the form of consent prescribed by rules of court, the Circuit Court shall not, by virtue of paragraph (a) of this subsection, have jurisdiction to hear and determine any cause of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference number in the case mentioned in column (3) of the said Schedule at that reference number."

5. The Third Schedule, as enacted, stated, *inter alia*, as follows:

"Ref No."	Civil proceedings in respect of which jurisdiction is conferred on the Circuit Court	Exclusion of jurisdiction (except by consent of necessary parties) in certain cases
(1)	(2)	(3)
...2.	An action...founded on contract where the debt or demand claimed consists of a balance after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand.	Where the amount of the balance claimed exceeds £600."

6. The figure of £600 has been amended more than once and, pursuant to s.17(b)(i) of the Act of 2013, the figure of €75,000 is now the stated figure.

7. Order 49, rule 7, RSC echoes s.25 of the Act of 1924, providing, *inter alia*, as follows:

"(1) Where any action or proceeding is pending in the High Court which might have been commenced in the Circuit Court or the District Court, any party to such action or proceeding may apply to the High Court that the action be remitted or transferred to the Circuit Court or the District Court (as the case may be), and if the High Court should not consider the

proceeding fit to be prosecuted in the High Court it may remit or transfer such action or proceeding to the Circuit Court or the District Court (as the case may be) to be prosecuted before the Judge to such Circuit or (as the case may require) the justice assigned to such District as may appear to the court suitable and convenient, upon such terms and subject to such conditions as to costs or otherwise as may appear just”.

8. It is unclear why s.11(2) of the 1936 Act remains on the statute-book as is. Section 22(1) of the 1961 Act appears to eliminate the optionality as to consent that ostensibly presents under s.11(2), rendering item [II] of s.11(2) redundant. Perhaps the view taken is that the earlier provision has been impliedly amended. In any event, here the requisite consent has not been forthcoming from Bank of Ireland Mortgage Bank; and even if item [II] of s.11(2) of the 1936 Act retains meaning, and the court does not see how it can in light of s.22(1) of the 1961 Act, the O’Connors concede that on the evidence now before the court it could not properly be satisfied as to [II][i] or properly reach the opinion referred to at [II][ii].

9. It follows from all of the foregoing that the application for remittal must respectfully be refused.