

## THE HIGH COURT

[RECORD NO. 2018/490 CA]

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY COMPANY

PLAINTIFF / APPLICANTS

V.

LINDA ROONEY AND RICHARD ROONEY

RESPONDENTS / APPELLANTS

**JUDGMENT of Mr. Justice Robert Eagar delivered on the 15th day of July 2019**

1. This is a judgment on an application on appeal taken by Richard Rooney, one of the appellants, against an order made by Judge Linnane on the 12th November 2018 in which the Circuit Court ordered that the plaintiff recover from the defendant possession of all that and those being the dwelling house and premises situated at Barley Field, Rolestown, Swords, Co. Dublin, and being the property comprised part of Folio 7552 of the Register, and more particularly described as Folio 174947 F.

2. The Circuit Court further ordered that the execution for possession be stayed until the 12th April 2019.

3. A number of what might be described as grounds of appeal were contained in the affidavit of Richard Rooney which was sworn on the 3rd July 2019.

4. In the first instance he applied for an adjournment of the proceedings on the basis that there were a number of appeals in the Supreme Court against the plaintiff, being in exactly similar circumstances to their own and he named: -

(a) *Maria Dunne v. Pepper Finance Corporation (Ireland)* DAC 2019/109; and

(b) *Byron Jenkins and Adrienne Jenkins v. Pepper Finance Corporation (Ireland)* DAC, 2019/071.

5. The appellant was not able to identify what exactly the issues were which had to be debated in these cases in the Supreme Court, and further counsel for the plaintiff/respondent indicated that those judgments had not been adopted yet by the Supreme Court.

6. The court declined to adjourn the matter and instead heard the appeal.

7. The facts of the case were set out by the affidavit of Caroline Loftus sworn on the 18th August 2016. She stated that the proceedings relate to the property known as Barley Field Rolestown, Swords, Co. Dublin. The property was registered in the Land Registry under Folio 7552 and now comprised in Folio 174947 F of the register of Co. Dublin.

8. She said that the premises was a family home, within the meaning of s. 2 of the Family Home Protection Act 1976, and is the principal private residence within the meaning of s. 3 of the Land and Conveyancing Law Reform Act 2013, and the mortgage was created prior to the 1st December 2009.

9. She also swore that the property was occupied by the defendants as their principal private residence and that no person other than those who had been served with these proceedings are in actual possession of the mortgage property. She said that by deed of mortgage dated the 5th September 2007 and made between the defendants on the one part and the plaintiff on the other part, the property was mortgaged/charged to secure the repayment of the loan herein set out and all the monies and then owing or which thereafter became owing from the defendants to the plaintiff.

10. By letter dated the 22nd August 2007 the plaintiff agreed to make a loan facility available to the defendants on the terms and conditions set out and she refers to the copy of the said letter of approval.

11. The court notes that in para. 4 of the terms and conditions in the letter of offer, it is made clear at 4 (b) that: -

*"in the event of any repayment not being paid on the due dates or any of them, or any breach of the conditions of the loan or any of the covenants or conditions contained in any of the security documents referred to in Clause 2 (a) the lender may demand an early repayment of the principal and the accrued interest or otherwise after the conditions of the loan".*

12. The court also notes in para. 10 that the borrowers' attention was drawn to the fact that the loan and the lenders security and any associated rights and interests (including the debt accrued and rights and interests under any related assurances) would be freely transferable whether by transfer, conveyance, assignment, mortgage or charge.

13. Ms. Loftus confirmed in para. 10 of her affidavit that the defendants acknowledged in writing their acceptance of the plaintiffs' letter of approval.

14. She further said that by way of security for the said loan facility the defendants executed a mortgage and charge in favour of the plaintiff on the 5th September 2007, and the total sum of €645,000 was subsequently advanced by the plaintiff to the defendants on the 3rd May 2007. She said that on or about the 3rd November 2009 the defendants defaulted in the terms of the loan facility and that as of the 12th August 2016 there were arrears outstanding in the amount of €286,892.56. By letter dated the 21st January 2015, the plaintiff demanded that the defendants repay to the plaintiff all of the sums then due and owing together with interests accrued therein in default of which the plaintiff would proceed to seek possession of the mortgaged property.

15. The court notes that the statement of accounts refer to the bank account of Linda Rooney and it is noted that Linda Rooney is not an appellant to these proceedings. By letter dated the 26th February 2015, the plaintiff through its solicitors wrote to the defendants calling upon the defendants to deliver vacant possession of the mortgaged property which is the subject matter of these proceedings, within a period of ten days. She further said that pursuant to the mortgage and the charge it was provided that the plaintiff shall have the power of sale of the lands and premises and she sought an order for possession in order to facilitate the sale of

same by the plaintiff. She also swears that the plaintiff (Pepper Finance Corporation (Ireland) Designated Activity Company) was formerly known as GE Capital Woodchester Home Loans Ltd. and changed its name to Pepper Finance Corporation (Ireland) Ltd. on the 11th October 2012, and refers to the copy of the certificate of incorporation on the change of name in the Companies Registration Office dated the 11th October 2012.

16. On the 29th October 2015 in accordance with the Companies Act 2014, Pepper Finance Corporation (Ireland) Ltd. converted to a Designated Activity Company. As a result of the conversion the plaintiff re-registered as Pepper Finance Corporation (Ireland) Designated Activity Company. She exhibits the certificate of incorporation and conversion to a Designated Activity Company issued by the Registrar of Companies on the 29th October 2015. She stated the plaintiff had power to take possession of the mortgage but it was beyond the plaintiffs' power to sell which property has arisen and becomes exercisable.

17. The next affidavit was that of a summons served for Martin Wall who said that on the 22nd November 2016 he personally served pleadings on the first named defendant Linda Rooney.

18. On five occasions between the 22nd November 2016 and the 15th December 2016 he attempted to personally serve the pleadings on the second named defendant.

19. The next relevant document was the affidavit of Richard Rooney sworn on the 17th July 2018.

20. His arguments were as follows: That Pepper Finance Corporation (Ireland) DAC are masquerading as the true owners of the portfolio GE Woodchester Home Loans Ltd. which he said did sell the company to Pepper Netherlands Holdings Cooperatie UA Homeloans and now renamed to Pepper Finance Corporation (Ireland) DAC.

21. He also says that the mortgage taken out by the respondent was sold by GE Woodchester Home Loans Ltd. on the 28th September 2012 and he said the plaintiff was not the original issuer and did not give him a mortgage and said it was not just a name change of all rights titles and equity.

22. The next relevant affidavit is that of Caroline Loftus in response to the affidavit of Richard Rooney. She said that by certificate of incorporation and change of name grounding the proceedings, GE Capital Woodchester Home Loans changed its name to Pepper Finance Corporation (Ireland) Ltd., and by certificate of incorporation on conversion to a Designated Activity Company, Pepper Finance Corporation (Ireland) changed its name to Pepper Finance Corporation (Ireland) Designated Activity Company. She stated that on the 28th September 2012, Pepper Netherlands Holdings Cooperatie UA purchased the entire share capital of the plaintiff subsequent to its change of ownership on the 28th September 2012. The plaintiff sold the beneficial interest in the mortgage book including the defendants' loan amount, to Windmill Funding Ltd. Following that transfer, the plaintiff and lender retained the exclusive legal right to enforce the legal rights and obligations owed to it pursuant to the mortgage deed executed by the defendants. Subsequent to the change of ownership of the plaintiff company the loan facility and mortgage, the subject matter of these proceedings, were securitised by means of a sale of the beneficial interest in both the facility and the security from the plaintiff to Windmill Funding Ltd. She says that such securitisation of the loan facility or mortgage security could never amount to a breach of contract in circumstances where the loan documentation expressly confirms the plaintiff was entitled to securitise the mortgage.

23. Counsel for the plaintiff/respondent referred to the decision of Ni Raifeartaigh J. in the matter of *Pepper Finance Corporation (Ireland) DAC v. Hanlon*, unreported, (11th January, 2018 Ni Raifeartaigh J., High Court), where she found that the effect of the agreement was that the plaintiff retained the legal title of the mortgage which gave them the right to enforce the order for possession.

24. The court has considered the judgment of Ni Raifeartaigh J., and further the decision of McDermott J. delivered on the 7th March 2019 in judicial review proceedings taken by applicants against a County Registrar and with notice parties Pepper Finance Corporation (Ireland) DAC. On the 28th September 2012, Pepper Netherlands Holdings Cooperatie UA purchased the entire share capital of the plaintiff which means that they took over Woodchester in its entirety and then became the subject of a name change which is reflected in the company's registration via certificate of incorporation. Ni Raifeartaigh J. stated: -

*"On the 28th September 2012, Pepper Netherlands took over the entire share capital of Woodchester, then that name changes to Pepper Finance Corporation (Ireland) on the 11th October 2012 in accordance with the Companies Act 1963, and there is an exhibit which is a certificate of incorporation during the name change from Woodchester to Pepper Finance Corporation (Ireland) Ltd.*

*Separately, if you like, what happened is that the plaintiff sold the beneficial interest in its mortgage book which included the defendants' mortgage, to Windmill Funding Ltd. and I note that again to a layperson it may seem as if something is sold it is a simple matter, as if you have a book and you give it to someone else and you sell it. It all goes. But in fact the legal complexities are much more than that, parts of it can be sold and parts of it are retained and there can be a split between the legal and the beneficial ownership. It is not simply as straightforward as the thing, a mortgage, being like a tangible thing that simply transfers in its entirety and what is clear here from the affidavit, and I have studied the documents again carefully, because I am conscious of the seriousness of the matter for the defendants, the final affidavit of Caroline Loftus set out the actual mortgage deed dated the 28th September 2012.*

*Unfortunately, one really does have to be a lawyer to understand what he is exactly saying, but this mortgage sale deed on 28th September 2012 is between GE Capital Woodchester Home Loans, a seller and portfolio manager, then there is Windmill Funding Ltd. who are the issuer. There is Pepper Netherlands who we know subsequently and GE Woodchester becomes Pepper Finance DAC, the plaintiff in the present case".*

The court adopts the judgment of Ni Raifeartaigh J.

25. Mr. Rooney also sought to state that evidence of the proceedings on the borrowers and all person in occupation over eighteen, (if applicable) referring to a document he recites as CC 17. There is no evidence from Mr. Rooney that there were any persons in occupation over the age of eighteen years, apart from himself and Linda Rooney. As stated the affidavits of Mr. Rooney and the affidavits of the plaintiffs and there is no evidence to suggest that there are any persons in occupation other than those served.

26. The court is satisfied that there are no grounds on which the appellant can succeed in this matter.

27. In all the circumstances of the case, the court dismisses the appeal taken by Richard Rooney against the appellant, Pepper Finance Corporation (Ireland) Designated Activity Company.

