

THE HIGH COURT

CHANCERY

[2017 No. 711P]

BETWEEN:**JOHN NOLAN****PLAINTIFF****-AND-****THE GOVERNOR AND COMPANY OF BANK OF IRELAND****AND****MICHAEL MCATEER****DEFENDANTS****EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 11th day of July, 2017.**

1. This is an application for an interlocutory injunction against a receiver appointed by a bank over the plaintiff's investment property on Clyde Road in Dublin 4. He borrowed money from the Bank on the security of this property and has failed to repay the sums due.
2. Counsel for the Bank submitted, and this was not contested by the plaintiff, that if and when the property is sold, the only question is how much of a shortfall there will be between the amount borrowed and the purchase price, since the loan is in considerable negative equity.
3. In his plenary summons the plaintiff claims that the receiver's appointment is void and in these proceedings he seeks an interlocutory injunction preventing the receiver from, *inter alia*, disposing of the property.
4. In particular, the plaintiff claims that he entered an oral agreement to vary his repayments to the Bank in September 2015. However, this Court does not find that this claim is credible, since on the 23rd September, 2015, the Bank wrote to the plaintiff and expressly stated it was not going to offer the plaintiff an alternative repayment arrangement. If the plaintiff had, as he now suggests, a binding oral agreement, he would have responded to the Bank at this time to that effect. Similarly, when he received a letter of demand from the Bank on the 12th November, 2015, and also when he received a letter dated 26th November, 2015, notifying him of the imminent appointment of the receiver, he would have responded to the Bank to advise it of his binding oral agreement, if such an agreement existed.
5. It is clear to this Court that, in the circumstances where the plaintiff is seeking an interlocutory injunction, such an injunction should only be granted if there is a fair question to be tried, if damages are not an adequate remedy and if the balance of convenience favours the granting of the injunction.
6. In this respect, the plaintiff sought to have additional time to make submissions regarding the documentation produced to him over lunch time by the Bank regarding the execution under seal of the Deed of Appointment of the receiver, rather than under hand. However, it is relevant to note that these documents were only produced at a late stage by the Bank, because the first claim, by the plaintiff regarding the fact that the Deed of Appointment should have been made under hand, was made only two business days ago.
7. Rather than delay these proceedings by granting such an adjournment, this Court can assume for the purposes of this application that the plaintiff has raised a fair issue to be tried regarding the validity of the appointment of the receiver because of the execution of the Deed of Appointment under seal, rather than under hand.
8. In such a situation the plaintiff still has to satisfy the Court that damages are not an adequate remedy before it grants the interlocutory injunction.
9. In this respect, the property in issue is an investment property. While it is on an expensive road in Dublin, despite what the plaintiff claims, there is nothing else that is unique about the property.
10. In particular, he alleges that the receiver has failed in his duties by failing to let the property to an embassy at a much higher rent than is available when it is let out to domestic tenants. However, the plaintiff himself had the property for several years and did not rent it out to an embassy. Instead, the plaintiff divided the property up into four lettings.
11. In this regard, the plaintiff is in no different a position than the thousands of other buy-to-let investors who have borrowed funds from a bank and found themselves unable to repay the borrowings. The fact that his property is on an expensive road and might be let out to an embassy does not mean that damages are not an adequate remedy in the event of the plaintiff being successful at the plenary hearing.
12. It is clear to this Court that the plaintiff's complaints against the Bank are all about money. Indeed, they include a curious complaint that the Bank should have increased the interest rate charged to him in 2008 at the height of the property crash and if it had done so, the plaintiff claims that he would have been forced to sell the property at that time and if he had done so at that time, he would have sold the property at a profit. It can be seen therefore that the essence of this part of his claim is a claim for damages.
13. In conclusion, it seems clear to this Court that if the plaintiff were to be successful in his plenary hearing and convince a future court that the receiver's appointment was void, then damages would be an adequate remedy to compensate him for his loss and so this Court sees no basis for granting the injunction sought by the plaintiff.