

**THE HIGH COURT**

**[2013 No. 7732 P]**

**BETWEEN**

**DECLAN TAITE AND PATRICK BRENNAN**

**PLAINTIFFS**

**AND**

**JERRY BEADES**

**DEFENDANT**

**AND**

**THE OCCUPANTS FOR THE TIME BEING OF 3 CLANCY COURT, FINGLAS, DUBLIN 11**

**NOTICE PARTIES**

**JUDGMENT of Mr. Justice McDermott delivered on 30th September, 2013**

1. The plaintiffs' claim is as duly appointed receivers over a number of properties owned by the defendant. The properties in issue are 65 Clancy Court, including residential properties known as 1 and 3 Clancy Court, Finglas, Dublin 11 (Property A), 67 and 69 Clancy Road, Finglas, Dublin 11 (Property B) and 116A McKee Road, Finglas, Dublin 11 including residential properties known as 2 and 4 Clancy Court, Finglas, Dublin 11 (Property C). It is claimed that each of these properties is a residential investment property owned by the defendant, some of which are occupied by tenants.

2. The plaintiff seeks interlocutory relief as set out in the notice of motion dated 24th July, 2013, as follows:-

"1. An order restraining the defendant his servants or agents and all persons acting in concert with him from interfering with and/or attempting to frustrate the activities of the plaintiffs as joint receivers and managers over the premises identified in the schedule hereto...pending further order of this Honourable Court or the determination of these proceedings;

2. An order restraining the defendants and each of them their servants and agents and all persons acting in concert with them from entering onto or otherwise interfering with the premises without the express consent of the plaintiff, pending further order of this Honourable Court or the determination of these proceedings;

3. An order restraining the defendant, his servants and agents and all persons acting in concert with him from harassing or intimidating any occupant of the premises, pending further order of this Honourable Court or the determination of these proceedings."

An order seeking possession of the premises was not pursued.

3. By mortgage dated 4th December, 2006, between the defendant and Ulster Bank Ireland Limited, Property A was charged by the defendant to the Bank to secure loan facilities advanced by the Bank to the defendant. The secured loan liability included all monies which were then or at any time thereafter became due and owing by the borrower to the Bank on any current or other account in any manner whatever without limitation. The defendant agreed to pay and discharge the secured liabilities on demand and the Bank's interest was ranked as a first charge on the property.

4. Clause 11 of the mortgage agreement provides for the appointment and powers of a receiver. Clause 11.1 provides:-

"At any time after the security hereby constituted has become enforceable or at any time after the borrower so requests the Bank may from time to time appoint under seal or under hand of a duly authorised officer or employee of the Bank any person or persons to be receiver and manager or receivers and managers...of the secured assets or any part or parts thereof..."

Clause 11.2 provides that these powers:-

"shall be in addition to and not be to the prejudice of all statutory and other powers of the Bank under the Conveyancing Act 1881 – 1911 (and so that any statutory power of sale shall be exercised although without the restrictions contained in s. 20 of the Conveyancing Act 1881) or otherwise and so that such powers shall be and remain exercisable by the Bank in respect of any part of the secured assets notwithstanding the appointment of a receiver thereover or over any other part of the secured assets."

The receiver is empowered to exercise all powers conferred by the Conveyancing Acts 1881 – 1911, as if appointed under those provisions. The receiver is conferred under the deed with extensive powers, including powers to deal with tenants at clause 11.4.7.

5. The plaintiffs claim that the loan facilities are secured by a first charge over each of the properties the subject of these proceedings as set out in a letter dated 26th May, 2010, in the sum of €3,270,000.00.

This letter was signed by the defendant on 21st July, 2010. It was signed on behalf of the Bank by a Manager and Associate Director.

6. An undated letter of demand was sent by courier to the defendant on or about 13th March, 2013. It is claimed that the defendant's failure to comply with that demand constituted an enforcement event which entitled the Bank to appoint "any person or persons to be receiver".

7. In a separate Deed of Mortgage dated 7th April, 2006, 67 and 69 Clancy Road (Property B) were charged by the defendant to the Bank. The terms of this Deed of Mortgage are identical to the first mortgage in respect of Property A. The Bank's letter of demand delivered on or about 13th March, 2013, by courier is also relied upon in respect of Property B and the defendant's failure to comply with that demand is said to constitute an enforcement event under the terms of this mortgage.

8. In a third Deed of Mortgage also dated 7th April, 2006, 116A McKee Road was charged by the defendant to the Bank. Since that charge was executed 2 and 4 Clancy Court, Finglas, Dublin 11 were constructed by the defendant to the rear of 116A McKee Road on the lands charged to the Bank. The failure by the defendant to comply with the same letter of demand in respect of Property C is also said to constitute an enforcement event under the terms of this mortgage.

9. I do not accept the proposition that because the letter of demand was undated, it could not have formed the basis of an enforcement event. I am satisfied that the defendant received the demand on or about 13th March, 2013.

10. Each of these Deeds of Mortgage was "signed, sealed and delivered" by the defendant. The defendant submits that the absence of any signature or seal on the part of Ulster Bank Ireland Limited to the Deeds of Mortgage in each of these cases renders them invalid. Section 2 of the Statute of Frauds (Ireland) 1695 requires that a memorandum or note in writing required under the section must be signed, but it does not require the signature of both parties. It is only necessary that a signature is provided by "the party to be charged therewith".

11. In each of the Deeds of Mortgage the defendant warranted that he was the lawful owner of each of the properties. He does not deny that he is the owner of the properties and that he received the money, the subject of the letter of demand, or that he failed to pay the money demanded of him.

12. The defendant makes a number of legal points which are set out in this affidavit which was filed on the day of the hearing on 23rd September, 2013. In particular, at paras. 7 – 13, the defendant challenges the validity of the appointment of the receivers on a number of legal grounds.

13. The defendant takes issue with the manner of appointment of the receivers in that the deed of appointment, though signed and delivered as a deed by Sean Cotter under a Power of Attorney dated 19th February, 2013, contains the words:-

"We, Ulster Bank Ireland Limited, having its registered office at Ulster Bank Group Centre, George's Quay, Dublin 2 do hereby appoint Declan Taite and Patrick Brennan, both of RSM Farrell Grant Sparks of Molyneux House, Bride Street, Dublin 8 to be joint receivers and managers...of all the assets referred to comprised in and charged by the charge and each such receiver shall have and be entitled jointly and severally to exercise the powers conferred on him by the charge and by law".

It is submitted that the deed is an Ulster Bank Ireland Limited deed and not one executed under a power of attorney and consequently, should have been completed in accordance with the law applicable to the execution of deeds by companies.

14. The Deed of Power of Attorney made on 19th February, 2013, in accordance with which Mr. Cotter appointed the plaintiffs as receivers, appoints him:-

"to be our attorney and we give and grant full power, warrant and authority to our attorneys for us and in our name and on our behalf to sign or otherwise execute and deliver the following documents videlicet: - deeds or other documents... relating to the exercise by or on our behalf of the power of sale and/or other rights and remedies under a security document and/or a facility letter or loan agreement..."

It further acknowledges that:-

"All deeds and other writings signed or otherwise executed by our attorneys in virtue of the powers hereby conferred shall be as valid and as binding on us as if done or were granted by ourselves."

I am satisfied that the deed of appointment of the plaintiffs of 19th March, 2013, was validly executed by Mr. Sean Cotter under a deed of power of attorney and that he was empowered to act in the name of Ulster Bank Ireland Limited and to execute the deed on their behalf, which was witnessed in accordance with the relevant statutory provisions.

15. The defendant also contends that the deed of appointment of the receiver was not sealed in accordance with the Land and Conveyancing Law Reform Act 2009. The defendant submits that s. 64(2)(b)(ii) provides that a deed which is executed by a company registered in the State:-

"is a deed if it is:-

(b) executed in the following manner:-

(ii) if made by a company registered in the State, it is executed under the seal of the company in accordance with its articles of association..."

The defendant contends that Article 31 of the Banks articles of association provides that:-

"The Seal shall be used only by the authority of the Directors or of a Sealing Committee authorised by the Directors on that behalf and every instrument to which the Seal shall be affixed shall be signed by any two Directors or Director and Secretary or any two members of such Sealing Committee or any two members from a combination of the foregoing..."

The defendant claimed that no seal was attached to the deed and that the requisite two signatories were not appended contrary to Article 31. In that regard, the defendant also relied upon Courtney *The Law of Companies* (3rd Ed.) (2012) at para. 7.015, in support of this submission.

16. The defendant also relied upon the judgment of Morris J. in *Safeera Ltd v. Fintan Wallace & Hugh O'Regan* (Unreported, High Court, 12th July, 1994), in which it was held that an indenture purportedly issued on behalf of a company in order to effect conveyance of the company's interest and property was not executed in accordance with the articles of association was, therefore, ineffective.

17. The same submission was made and rejected by this Court in *Liam Dowdall & Sean McNamara v. Pat O'Connor & Joan O'Connor* (Unreported, High Court, McDermott J., 11th September, 2013). The deed of appointment of the receivers was signed and delivered by Mr. Cotter under a power of attorney on behalf of Ulster Bank Ireland Limited which was witnessed on the same date. Mr. Cotter was conferred with the power of attorney by Ulster Bank Ltd by a deed bearing the company seal and two signatories and dated 19th February, 2013. The terms of the power of attorney vested in Mr. Cotter gave him the power to sign or otherwise execute deeds relating to "rights and remedies under security documents and/or a facility letter or loan agreement...". I am satisfied that the appointment of the plaintiffs as receivers in respect of Properties A, B and C were made by Mr. Cotter acting under the lawful power of attorney vested in him by Ulster Bank Ireland Limited. The deed of appointment was, therefore, not made by the company but by an individual acting under a power of attorney. Accordingly, the deed of appointment was lawful and in accordance with the provisions of s. 64(2)(b)(i)(I) which states that an instrument executed after the commencement of s. 64 of the 2009 Act is a deed if it is:-

"(b) executed in the following manner:-

(i) If made by an individual:-

(I) it is signed by the individual in the presence of a witness who attests the signature..."

I am satisfied that in these circumstances the decision in *Safeera Ltd* does not apply.

18. Section 17(1) of the Powers of Attorney Act 1996, provides that:-

"(1) The donee of a power of attorney may -

(a) execute any instrument with his or her own signature and, where sealing is required with his or her own seal, and

(b) do any other thing in his or her own name by the authority of the donor of the power; and any instrument executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature or seal or, as the case may be, in the name of the donor of the power."

19. I am satisfied for the purposes of this application that the plaintiffs have furnished a strong evidential basis to establish that they were lawfully appointed as receivers of the properties in issue in this case pursuant to the respective deeds of appointment.

20. I am also satisfied that there are extensive provisions set out in the Deeds of Mortgage empowering the Bank to appoint a receiver. For the avoidance of doubt, I consider it appropriate to refer to the terms of the Deeds of Mortgage which incorporate provisions of the Conveyancing and Law of Property Act 1881, now repealed, because the defendant acted as McKenzie friend in the *Dowdall and McNamara* case in which repeal of various provisions of the 1881 Act was canvassed. In fairness to the defendant it should be noted that though no formal submissions were made to me in that regard in this case, I have considered that argument. Although reference is made to the application of various provisions of the Conveyancing and Law of Property Act 1881, which was repealed by s. 8 of the Land and Conveyancing Law Reform Act 2009, I am satisfied having regard to the provisions of the 1881 Act and the mortgage conditions agreed and acknowledged between the parties that the rights, remedies and powers given to the Bank by reference to the provisions of the 1881 Act at a time when the Act was of full force and effect, continue to apply on the proper construction of the mortgage deeds and the rights and remedies created by their terms. (See *Kavanagh & Lowe v. Lynch and St. Angela's Student Residences Limited* [2011] IEHC 348).

21. Therefore, I am not satisfied, for the reasons set out above and in the case of *Dowdall and McNamara* that any of the legal submissions relied upon by the defendant in challenging the appointment of the receivers are correct.

22. The plaintiffs complain that the defendant has taken or intends to take action to interfere with them in the execution of their duties as receivers in respect of all of these properties. The evidence relied upon is set out in the affidavit of David Taite. It is alleged that the defendant, apart from denying the validity of the plaintiffs' appointment, has actively obstructed their efforts and those of their servants or agents to take control of and deal with the premises as joint receivers and they fear that he will continue to do so in the future unless restrained by court order. The plaintiffs claim that at the time of their appointment as receivers 3 Clancy Court was vacant and remained vacant until 18th July, 2013. Mr. Taite says that tenants at neighbouring properties in Clancy Court have contacted his office on a number of occasions stating the defendant had attempted to gain access to 3 Clancy Court. He also stated that he was advised by Ktech Security Ltd that on 29th March, 2013, a representative of the security firm called to 3 Clancy Court and found that the lock had been drilled and the side gate had been opened. The security firm replaced the locks and reported the incident to An Garda Síochána. No other damage had occurred.

23. By letters dated 5th April, 2013 Lowe & Associates wrote to the tenants of each of the properties over which the receivers had been appointed on their behalf following discussions with the Threshold Organisation, who represent tenants, for the purpose of explaining the requirements of the tenants to cooperate with the receivership and to pay rent to the receivers rather than to the defendant. It was believed that 3 Clancy Court was vacant but a letter in similar terms was sent to that address on the same date.

24. Mr. Taite avers that on the afternoon of 18th July, 2013, his office was notified by Ktech Security that the defendant was at 3 Clancy Court. It was reported that the defendant was changing the locks to the premises and had brought with him two persons to whom he was purporting to let the premises. A report of the event was furnished by Mr. Sean Molloy of Ktech Security Ltd on 19th July to the receivers RSM Farrell Grant Sparks, who forwarded an incident memo to Ulster Bank (Ireland) Limited. The incident memo claims that on the 18th July, 2013, Ktech Security alerted the receivers to the fact that the defendant was on site at No. 3 Clancy Court. Ktech staff informed the gardaí and attended the property. The defendant was changing the locks at the property and was in the company of two individuals who were due to move in as tenants. Representatives from Ktech approached the defendant in the presence of the gardaí and requested that he desist from changing the locks. The defendant is purported to have become very aggressive and threatened physical violence. The gardaí requested documentary evidence from Ktech to prove that the defendant was not entitled to change the locks. Since the security personnel did not have copies of the Deeds of Appointment to hand, they were advised for their own safety to maintain a presence, but move off site. Mr. Donal Crotty of RSM Farrell Grant Sparks attended at Finglas Garda Station later that evening with copies of the relevant Deeds of Appointment. He advised the garda on duty that the relevant Deeds of Appointment had been provided previously and that a case should already exist in relation to the matter. The garda confirmed that this was the case. Mr. Crotty was advised that a garda who was present when the defendant was changing the locks would be arriving back to take a statement from Ktech and the receivers. At this point Mr. Kevin McGarry of Ktech produced an incident report and provided this to the garda. The relevant garda arrived back at the station and explained to Mr. Crotty and Mr. McGarry that he was not familiar with Deeds of Appointment and that nothing could be done without a court order. Mr. Crotty

explained the history of the case and the receivership process outlining his view that the defendant was, in effect, breaking and entering as well as trespassing. The garda explained that it was a civil matter rather than a criminal case and that until such time as a court order was produced, there was little that could be done.

25. The incident report to Mr. Crotty from Ktech Security states that when the security officer arrived the defendant was present with one other male and two gardaí from Finglas station. The defendant was drilling the door and the gardaí asked him to stop. It is alleged that the defendant stopped drilling and started shouting profanities at the security officer, Mr. Przewlocki. It was explained by Mr. Molloy from the security company that they were there on behalf of the receivers and that the defendant had no right to be on the property. It was alleged that the defendant was verbally aggressive and swiped at Mr. Przewlocki, though he made no contact. It is alleged that he acted in a physically intimidating manner towards Ktech personnel. The gardaí at that stage consulted with their Superintendent and advised the security personnel that there was no proof of ownership of the property and instructed them to leave the property. They then allowed the defendant to continue drilling the lock as before. A number of photographs were taken clearly showing the defendant present at the premises.

26. The defendant up to this point had been in extensive correspondence with the receivers complaining about the absence of documentation and challenging the lawfulness of their appointment. No application was ever brought challenging the appointment of the receivers until these proceedings were initiated by them against the defendant. Over the following days Ktech Security continued to monitor 3 Clancy Court and on 22nd July, 2013, it was reported by one of the security staff that a truck bearing the defendant's name was parked at 3 Clancy Court. In that regard, the defendant in court complained that there was no evidence that the van photographed by the security man at that time was his property. It is, however, quite clear that the van bears the logo "Jerry Beades Concrete" on the front and sides of the van and is parked completely in the front driveway of the premises. The van was still there on the afternoon of 22nd July. The security staff checked the house and noticed that the back door was open and the truck was still in place. The photographs indicate a number of children's toys in the back garden of the premises. The receivers are concerned that the individuals who accompanied the defendant may now be in occupation of No. 3 Clancy Court and may seek to assert some right of occupation on foot of a purported lease or tenancy with the defendant. By letter dated 22nd July, 2013, Gartlan Furey Solicitors wrote to the occupiers on behalf of the receivers notifying them of the situation and pointing out that their occupation of the premises was unlawful. The court was informed that following a hearing before Ms. Justice Laffoy the occupants for the time being of 3 Clancy Court, Finglas, Dublin 11 were joined as notice parties to the application.

27. In his replying affidavit the defendant refutes the evidence of Ktech Security. He denies the "evidence as set out from para. 1 – 21, as again he is incorrectly appointed and as such is a trespasser in law and as are all his agents and Ktech Security Company". He alleges that Ktech Security has produced security log evidence which is unsubstantiated and based on hearsay. He claims that the evidence is false. He asked the court to refer the false evidence to the Director of Public Prosecutions.

28. Objection was taken during the course of the hearing to the admissibility of the Ktech Security memos and photographs in relation to the incidents of which complaint is made, but I made a ruling that such evidence was admissible in the course of an interlocutory application notwithstanding the fact that it was hearsay in accordance with O. 40, r. 4 of the Rules of the Superior Courts. It is for the court to determine what weight to give to such evidence having regard to the fact that the deponent does not have first hand knowledge of the facts set out in the reports and accordingly, the court must give careful consideration to the origin, nature and extent of such evidence before acting upon it.

29. For his part, the defendant has not sworn an affidavit engaging directly or in detail with the facts set out in the reports. In his submissions to the court his general denial of the truthfulness of the entirety of the reports has been substantially qualified. He accepts that he was present on 18th July, 2013, but takes issue with the course of events as outlined by Ktech Security Limited. He accepts that he was changing the locks on the premises and claims he was entitled to do so. He claims that the security men were asked to leave the premises but did not depart the scene. As a result the defendant claims that it can be seen in the photograph that he is phoning the garda station in relation to the failure of the security staff to depart. These matters may ultimately fall to be resolved at a full hearing of the action on evidence from both sides, but I am satisfied that the admitted actions of the defendant support the plaintiffs claim that he is deliberately obstructing and interfering with them in the exercise of their duty.

30. Mr. Taite avers that reports have been received from the occupants of No's 67 and 69 Clancy Road that the defendant has sought to prevent them discharging rent now lawfully due to the receivers. Ms. Sabrina Mangan, the occupant of 67 Clancy Road, has provided a note to the receivers outlining the fact that she feels intimidated by the defendant. That note has been exhibited. She complained of being watched in her back garden with the children. She says that she has been intimidated by the defendant but has given no details of any such occasion. She outlines in the note how she had to leave her car in her garden when going out to prevent the defendant thinking that she was out, because he had keys to her home and she was afraid that he might enter her home in her absence. She says she is in fear of retaliation and is living in fear. The defendant, for his part, completely rejects this allegation. He states that he has never put any tenant in fear and that although he has approached tenants since the appointment of the receivers, this was at their request because of the confusion they feel as to their status as tenants. He rejects entirely the allegations set out in the note exhibited. He claims that Ms. Mangan is Polish and a friend of one of the Polish security men and that the note is a complete fabrication and contrivance. These are matters which will likely be the subject of further evidence at the full hearing of the action. The allegations contained in the note are serious and the court is entitled to expect that the receivers would have investigated the allegations made by Ms. Mangan in more detail so that evidence might be furnished of the occasion and circumstances of any alleged intimidation of Ms. Mangan by the defendant. For that reason, I attach much less weight to the allegations contained in the note than might otherwise have been the case.

31. In respect of the premises 116A McKee Road, Finglas and 2 and 4 Clancy Court, the receivers complain that "the defendant may have attempted to prevent the occupants of these premises from discharging rent to the receivers". Mr. Taite states that the occupants of the premises other than 3 Clancy Court have indicated an understandable reluctance to become involved in these proceedings but contends that the pattern of behaviour demonstrated by the defendant in respect of certain of the premises gives rise to a real concern that he intends to take further steps to interfere with the discharge of the receivers' duties in respect of all of the premises.

32. There is no evidence offered to suggest that the defendant has attempted to prevent the occupants of 116A and 2 and 4 Clancy Court from discharging rent to the receivers.

33. The defendant states that he is not the landlord to the tenants occupying the premises at No. 3 Clancy Court nor the landlord of other properties, the subject of these proceedings. He concedes that there is a tenant now residing at 3 Clancy Court. The receivers are not in receipt of the rents from the tenants, notwithstanding the defendant's full knowledge of their appointment and entitlement. The defendant claims that his wife, Bríd Kavanagh, is the landlady of the premises and holds the premises under some form of arrangement or lease with the defendant. The defendant has not furnished any evidence of a lease granted to Bríd Kavanagh by him.

The defendant accepts and has informed the court that he has attended at the premises and has been dealing with the tenants. It would appear that rents are due and/or paid to Bríd Kavanagh to which the defendant would normally be entitled as owner of the premises, but these have not been paid to the receivers. The defendant did not furnish any detail about this arrangement to the court apart from the reference in passing to the fact that Bríd Kavanagh was the landlord of each of these premises, notwithstanding his involvement with the tenants and his attendance at the premises. He claims that he cannot reveal any more because of the *in camera* rule that applies in matrimonial proceedings in which he is engaged with Mrs. Kavanagh in the Circuit Court. It is clear that neither the receivers nor the Bank are on notice of any proceedings affecting their interests in these properties arising out of matrimonial proceedings or otherwise, and I am not satisfied on the basis of this bald assertion by the defendant that these proceedings are of any relevance or justify in any way the defendant's attitude and behaviour towards the receivers in the exercise of their duties and powers.

34. I am satisfied that the first element of the test in *Campus Oil Ltd v. Minister for Industry and Energy (No.2)* [1983] I.R. 88 requires the plaintiffs to establish a fair issue to be tried. I am satisfied that the plaintiffs have established that as receivers duly appointed they have an entitlement to enter upon and take possession of the lands and are also entitled to the rents and profits of the various properties, the subject matter of these proceedings, pending the determination of the substantive proceedings. The defendant entered into an agreement for loan facilities and a number of Deeds of Mortgage in respect of the various properties A, B and C. These included provision for the appointment of a receiver if he failed to comply with a lawful demand for monies advanced. I am satisfied that a lawful demand was made with which the defendant did not comply which led to the appointment of the receivers. There is abundant evidence to establish that the plaintiffs had been appointed as receivers and are entitled to exercise their powers in accordance with law.

35. I must also consider whether damages would be an adequate remedy for the plaintiffs if they were to establish their entitlement to the injunctions claimed at the full hearing of the action but had been refused interlocutory relief. I have no doubt, having considered all of the evidence advanced in the case, that the defendant will take every opportunity to impede, frustrate and obstruct the receivers in the exercise of their duties and treat them as he continues to do as trespassers, unless restrained by this Court. I am satisfied that the defendant will seek to exclude the plaintiffs from access to the premises and to frustrate them in attempts to secure the rental income from the premises as a result of which the Bank will incur further loss in addition to that already accumulated. The defendant is unable or unwilling to discharge his liability to the Bank and it does not appear that any losses would be recoverable from the defendant by the plaintiffs. It is clear that the plaintiffs have offered an undertaking as to damages which will compensate for any loss which the defendant may sustain pending the hearing of the substantive case if it is shown that an injunction should not have been granted. I am also satisfied that receivers who have adduced considerable evidence that they have been lawfully appointed and have legal rights and duties, should not be the subject of continuing interference and obstruction. I am satisfied in all the circumstances that damages would not be an adequate remedy for the plaintiffs in this case.

36. I must also consider whether the balance of convenience lies in favour of granting the interlocutory relief sought. The attitude and behaviour of the defendant to the receivers, their servants or agents is calculated to undermine the peaceful and lawful execution by the receivers of their duties, and if there is continuing engagement by the defendant with the properties, for example, by changing locks, it will be impossible for the receivers or any tenants who might be introduced to the premises to exercise their rights peacefully. On the evidence adduced to date the Bank, step by step, has engaged reasonably with the defendant in asserting its rights under the various Deeds of Mortgage and it is important for the receivers and the tenants of the properties that there be clarity and stability in the definition and exercise of their rights and, in particular, that the tenants be permitted peaceful enjoyment of their homes without being exposed to public manifestations of this dispute or, any other interference by the defendant. It is also important that the receiver be able to assure tenants of their legal entitlements and security of tenure. I am, therefore, satisfied that the balance of convenience favours the granting of the relief sought in these proceedings.

#### **Decision**

37. I am satisfied that the relevant tests in *Campus Oil* have been met by the plaintiffs and an interlocutory injunction will be granted in terms of paras. 1, 2 and 3 of the notice of motion.