



**THE COURT OF APPEAL**

Neutral Citation Number: [2019] IECA 44

**Record Number: 2017/283**

**Peart J.  
McGovern J.  
Costello J.**

**IN THE MATTER OF SECTION 19 (1) OF THE REGISTRATION OF TITLE ACT, 1964; AND IN THE MATTER OF RULE 159 (9) OF THE LAND REGISTRY RULES, 2012; AND IN THE MATTER OF ORDER 96 OF THE RULES OF THE SUPERIOR COURT; AND IN THE MATTER OF FOLIOS CN 31670F AND CN32247F**

**BETWEEN:**

**CHARLES McGUINNESS**

**APPLICANT/APPELLANT**

**- AND -**

**PROPERTY REGISTRATION AUTHORITY**

**FIRST NAMED RESPONDENT**

**- AND -**

**ANDREW MOORE**

**SECOND NAMED RESPONDENT**

**- AND -**

**VICTOR PICKENS**

**THIRD NAMED RESPONDENT**

**JUDGMENT OF MR. JUSTICE MICHAEL PEART DELIVERED ON THE 22ND DAY OF FEBRUARY 2019**

1. This is an appeal against the order of the High Court (Abbott J.) made on the 17th February 2017 refusing the appellant's application brought by way of notice of motion dated 21st March, 2016 (as amended by order dated 17th February, 2017) wherein he had sought, inter alia, an order pursuant to s.19 of the Registration of Title Act 1964 setting aside the refusal of the Property Registration Authority of Ireland dated 9th March, 2016 to permit him to inspect and obtain a copy of Instrument Number D2013LR064719M and Instrument Number D2013LR053255M.

2. As evidenced by the said letter, the reason for the refusal to permit him to inspect and obtain a copy of these instruments was that he is not the registered owner of the two folios upon which these instruments are registered, namely Folios CN31670F and CN32274F ("the folios"). The instruments in question comprised transfers of the respective properties comprised in the folios by the registered owner of a charge on each folio pursuant to its power of sale.

3. By way of brief background, the appellant together with others had borrowed money from Ulster Bank Ireland Limited in 2006 for the purpose of assisting with the purchase of certain lands in Cavan. This loan was secured by way of deed of charge registered on the folios of which the appellant and those other parties were at that time the registered owners as tenants in common.

4. Following an event of default on the loan, the bank appointed a receiver over the secured lands. A challenge to the receiver's appointment was unsuccessful, and in due course the receiver sold the lands comprised in the folios to the second and third named respondents. That transfer of ownership is the subject of the two instruments registered on the folios in question which the appellant wishes to inspect and obtain copies. He does not know what consideration was paid by the purchasers, and an inspection of these instruments would provide him with that information.

5. In his first grounding affidavit the appellant states that he must have an entitlement to inspect and obtain copies of the instruments which deprived him of his ownership of his property "so that the process by which it was transferred is fair, open and transparent" and so that he, being the affected person "can address any issues that might arise from such transfers, when I have all the details of the said transfers". He went on to state that without being able to obtain copies of the instruments, and knowing exactly how, who and by what authority his property was transferred, he was unaware if he had any grounds for an action against any of the persons who transferred his property, and in the event that he brought any such action, the courts would not be in a position to effectively make a decision without knowing all the facts.

6. Ms. Pope, the Deputy Registrar of the Property Registration Authority of Ireland ("the PRAI") responded to the said grounding affidavit. In her replying affidavit she gave an account of the transactions by which the ownership of the relevant lands passed to the first and second named respondents on foot of transfers by Ulster Bank Ireland Limited, being the owners under its power of sale.

7. Ms. Pope went on to refer to other matters, such as the registration of a *lis pendens* on the said folios by the appellant and another party, and to the fact that the proceedings the subject of that *lis pendens* were dismissed. The *lis* in question was the challenge to the receiver's appointment already referred to. She also referred to the fact that she had received a letter from a

solicitor acting on behalf of the appellant and another party in which the statutory basis upon which these transfers had been made by Ulster Bank Ireland Ltd was questioned, and that she had received a further letter from the appellant himself in which he advised that he had made a criminal complaint to An Garda Síochána in relation to these transfers by the bank.

8. Ms. Pope then refers to the appellant's two application to the PRAI in October 2015 to be permitted to inspect the two instruments referred to, and to the fact that those applications were referred to an Examiner of Titles for a ruling. She refers also to the fact that in the course of the referral to the Examiner of Titles, it had been noticed that "Mr McGuinness had been allowed to inspect both instruments at the public counter and that this had happened in error as he had in fact no entitlement under the Land Registry Rules to inspect the instruments by reason that he was not the registered owner of either of the folios in question at that juncture".

9. In due course by letter dated 9th March 2016 the appellant was advised that the said instruments contained transfers by the registered owner of a charge acting under its power of sale, and that he was not entitled to inspect or be provided with copies of same "as he was not the registered owner of the lands to which each of the instruments related". Ms. Pope avers that he was invited to withdraw his application; however, he replied by letter dated 15th March, 2016 indicating that he intended to appeal this decision under s.19 of the Registration of Title Act, 1964.

10. In her replying affidavit, Ms. Pope went on to state that, as could be seen from the appellant's correspondence, he did not cite any special circumstances that would bring his application within the scope of Rule 159 (9) of the Land Registry Rules 2012 and thereby permit inspection and copying of an instrument "by a person other than the registered owner of the lands to which the instrument relates". She expressed her view that "the mere fact that Mr McGuinness was one of the previous registered owners of the properties in question does not constitute 'special circumstances' within the meaning of Rule 159 (9)".

11. In his second affidavit, the appellant takes issue with Ms. Pope's averment that he had been permitted to inspect these instruments when he had visited the PRAI office. In that regard he denies that he had been permitted to inspect the instruments but rather that he "was allowed inspect three documents each described at their heads as Form 25". He expands upon the details of that visit and a subsequent visit on 10th November, 2015 when again, he inspected three documents headed Form 25 which he had inspected on his previous visit. He goes on to state that he then made two applications using Land Registry Form 96 for copies of the instruments in question under Rule 159 (9) on the grounds that he was one of the registered owners of the folios in question "when the application to transfer was lodged".

12. In this second affidavit, the appellant refers to his visit to the PRAI office for the purpose of lodging a notice of motion and grounding affidavit seeking an order directing the PRAI to make certified copies of the instruments in question available to him. He states that in due course he was advised by a staff member that "she could not take the papers as my application was still pending and that the Property Registration Authority were still waiting for me to lodge special circumstances ...". This staff member, according to the appellant, advised him that Ms Finnegan, the author of the letter already referred to dated 9th March, 2016, had written to him seeking details of "special circumstances", but the appellant informed the member of staff that he had not received any such letter. He refers to a further visit on 29th February, 2016 when he returned to the PRAI office in order to lodge his motion and grounding affidavit, and he states that on that occasion he was informed once again that his papers could not be accepted "as no decision on my application had been made". As already stated, by letter dated 9th March, 2016 he was informed of the decision that "as you are not the registered owner of [the folios] you appear not to be entitled to inspect or obtain a copy". He later received a more formal ruling dated 20th April, 2016 which states under the heading "Ruling":

"Refuse registration [sic] on the grounds that the Property Registration Authority is not satisfied that the applicant has established his right to the copy instrument sought as he is not the registered owner of [the folios]".

13. I should add that during the course of the appeal before this Court the appellant referred to other correspondence which he and/or his solicitor had with the PRAI, but which he had not available to hand into the court. He undertook to do so later and the court has received same, and taken it into account.

14. In his written judgment delivered on the 22nd May, 2017 the trial judge outlined much of the history to which I have already referred. He referred to Rule 159 (9) of the Land Registry Rules 2012 [S.I No. 483 of 2012] which provides:

"(9) The Authority may, in special circumstances and on such terms as it shall think fit, permit a person to inspect or obtain a copy of, a document filed in the Registry."

15. To provide some further context it is helpful to set forth Rule 159 (1) also:

"(1) the registered owner of property and any person authorised, or by an order of the court or by these Rules, but no other person, may inspect a document filed in the Registry on a dealing or transaction with the property of the owner".

16. It is clear from a reading of those rules that, absent "special circumstances", no person other than the registered owner or other person authorised by him/her may inspect instruments lodged in the Registry without an order of the Court, or as a matter of discretion by the Authority, where special circumstances have been demonstrated for the purposes of an application under sub-rule (9).

17. The trial judge referred to the fact that the appellant had been the registered owner of a share in the two folios when the deed of mortgage executed by him and his co-owners was registered as a burden on the folios, but went on to state "he had ceased to be the registered owner of the said folios by the time he requested certified copy [sic] of the instruments". The trial judge went on to state that the registration of those instruments had caused him "to cease to be the registered owner", and he was satisfied that from what the appellant had stated in his written submissions he was aware of the possible existence of these instruments, and that this awareness was also apparent from a letter that his solicitors had written on his behalf showing that he had instructed them that an attempt to sell the property by Ulster Bank Ireland Limited was being made pursuant to the power of sale contained in the registered charge. In his written submissions to the High Court the appellant had referred to a notice dated 23rd April, 2014 which he had received from the PRA notifying him that: "Ulster Bank Ireland Ltd the registered owner of the charge ... in exercise of its power of sale has launched an application to transfer part of the property described in folio...", and to a second notice of the same date informing him that "In exercise of a Power of Sale arising under a charge registered on the above mentioned folio, Ulster Bank Ireland Limited has/have transferred part of the said property and the said Deed of Transfer is now the subject of an application for registration in this Registry". It appears from a letter dated 21st May, 2015 from the PRA that the appellant was informed that those registrations "were proceeding".

18. Prior to the completion of those registrations of course, the appellant would still have been the registered owner of the lands in

question. Until those registrations were completed the appellant would have been entitled to be provided with copies of, or to inspect, the instruments in question. However, that does not appear to have been something that the appellant sought to do at that time. The Court has been provided with copies of letters dated 20th February, 2015 (i.e. prior to the completion of the registration of the new owners under the instruments in question) from the appellant to the PRA in which he refers to those notifications to him dated 23rd April 2014. However, while this correspondence raises an objection by reference to the provisions of s.60 of the Registration of Title Act 1964, it does not contain any request to be permitted to inspect, or to be provided with copies of, the instruments in question.

19. The trial judge went on to refer to the fact that until registration was completed he might, while still the registered owner, have availed of an opportunity to inspect the instruments in question or to seek copies thereof in order to further his objection to registration. The trial judge stated that the appellant cannot argue that "he is or has been taken by surprise by the registration of the purchasers under the said instruments". He went on:

"Having not availed of this window of opportunity the applicant cannot now show that there are special circumstances existing which should compel the PRA from departing from the general rule of refusing to furnish copies of the instruments."

20. At para. 20 of his judgment, the trial judge stated as follows by way of conclusion:

"The applicant has failed to show special circumstances in his first affidavit and furthermore failed to alert the court in the first instance to the correspondence with his solicitors in 2015 which might have opened the door to him to achieve his objective of production of the relevant instruments (even if such objective had to be pursued even through an application to court). The fact that the applicant did not alert the court as to the existence of the window of opportunity to have the documents produced to him after the reply to a solicitor's letter in March 2015 is indicative of a certain lack of candour which, in my opinion, removes him from the category of bona fide applicants who would satisfy the criteria to be met by the jurisprudence and the rules of 2012".

21. The appellant sets forth 8 grounds of appeal in his notice of appeal. I will summarise them from how they are stated in the appellant's written submissions to this Court:

(a) the trial judge erred by not following judgments of the Supreme Court in *Re: Fitzgerald* [1925] I.R. 39 and *Mallak v. Minister for Justice, Equality and Law Reform* [2012] IESC 59;

(b) The trial judge failed to acknowledge the appellant's right of inspection and two copies of the instruments having regard to (i) the fact that he was one of the registered owners at the time the application to transfer ownership was lodged, and as such, special circumstances existed; (ii) his common-law right of inspection and to copies of the instruments; (iii) rule 159 of the Land Registration Rules, 2012 does not preclude any member of the public from having the right to inspect and obtain copies of instruments; and (iv) there was evidence before the High Court that a similar application had been granted to a named person previously.

(c) The trial judge erred in stating in his judgment that the narrative of the history of the registration of the charge which is contained in the judgment of Hogan J. in relation to the appellant's challenge to the receiver's appointment, was accepted by the appellant.

(d) The trial judge failed to take judicial notice, as required by s. 13 of the Interpretation Act 2005, of the fact that (i) Ulster Bank Ireland Limited did not have a power of sale since it did not obtain a court order for possession, and (ii) the appellant was denied "his Constitution Right under Article 40 3 2 of the Constitution of Ireland [sic].

(e) The trial judge erred in failing to address the fact that proper procedure had not been followed by the PRAI because (i) there was no evidence as to whether or not the PRAI had made enquiries and given notices in Form 97, or at all, (ii) even if enquiries had been made and notices given, there was no evidence of any reply, and if there was no reply the PRAI was not obliged to adjudicate on the matter, and (iii) the trial judge presumed that the appellant had received notices dated 23rd April 2014 of the proposed transfers in accordance with Form 27 of the Rules, when in fact the evidence before the court was that proper notice had not been given.

(f) The trial judge erred in concluding that a window of opportunity existed for the appellant to seek production of a certified copy of the instruments prior to the completion of registration, when in fact no such opportunity existed.

(g) The trial judge erred in stating that the applicant had failed to show special circumstances in his first affidavit.

(h) The judge erred in deciding that a lack of candour on the part of the appellant removed him from the category of bona fide applicants who would satisfy the criteria to be met, when in fact no opportunity to obtain certified copy instruments existed prior to the completion of registration.

22. In my view a number of the grounds of appeal summarised above are not central to the disposal of this appeal. Reliance upon the Supreme Court's judgment *Re Fitzgerald* adds little to the appellant's argument. It stated the general proposition, which is not really in controversy, that the general common law right to inspect public documents is maintained in favour of any person "who can show that he has an interest". In my view that principle is maintained by the provision in Rule 159(9) of the 2012 Rules i.e. that "the Authority may, in special circumstances and on such terms as it shall think fit, permit a person to inspect or obtain a copy of, a document filed in the Registry". Without that provision, the otherwise blanket rule in Rule 159(1) might offend against the common law principle stated in *Re Fitzgerald*. Reliance upon the decision in *Mallak* similarly does not advance the appellant's argument. There is no controversy in relation to the duty to give reasons on the part of the PRAI. But it did give its reason for refusing access to the instruments, namely that the appellant is not the registered owner of the properties. The question remains of course whether, as submitted by the appellant, the fact that he was a previous owner of the lands in question brings him within either Rule 159(1) of the 2012 Rules or establishes the kind of special circumstances envisaged by Rule 159(9) of those Rules, and therefore that the reason given by the PRAI is insufficient to justify refusal. I will come to that.

23. Much of ground (b) above is covered by what I have said, and I will return to it in due course.

24. As for ground (c) where the appellant takes issue with the trial judge's statement that much of the history of events as given by Hogan J. in his judgment on the appellant's challenge to the receiver's appointment had been accepted by the appellant, that

question really does not need to be addressed. It is peripheral to the central question on this appeal, namely whether the appellant was entitled to inspect these instruments and/or be provided with certified copies thereof. As I have said, I will come to that issue.

25. Ground (d) is not relevant to the central question on this appeal. This Court is not concerned with whether or not the power of sale contained in the mortgage/charge was properly exercised. The present application for inspection of the instruments or to obtain copies thereof cannot be expanded by the appellant into seeking to impugn the legality of the transfers made by the bank to the persons who are now registered as owners.

26. Ground (e) relates to an alleged failure by the PRAI to follow proper procedure under Rule 159 of the 2012 Rules. The appellant has referred to Rule 159(11) which provides that "Before allowing inspection of the document by a person claiming inspection under Rule 159, the Authority may make such enquiries and give such notices as it may think fit. Notice under this rule shall be in Form 97". This is a notice to the present registered owners of the appellant's request for inspection of the instruments. The appellant complains that notwithstanding that the PRAI is not obliged to make such enquiries and give such notices as it thinks fit, there was no evidence as to whether it made any such enquiries and/or gave such notices. He further argues that even if such enquiries were made and notices were given, there was no evidence of any reply. He goes on to say that if there was no reply then the PRAI was not obliged to adjudicate on the matter. The appellant's complaint is that the trial judge presumed that he had received notice of the proposed transfers in accordance with Form 27 dated 23rd April, 2014 in relation to the transfers to the new owners when, he says, the evidence before the court was that proper notice was not given.

27. In my view, once again, the ground of appeal raised at (e) is not relevant to the very net issue which is central to the present appeal, namely whether the appellant, as a person who in the past was a registered owner of the properties in question, nevertheless retained his entitlement under the Rules to inspect an instrument registered on the folio(s) in question after he ceased to be the registered owner. In my view it is not relevant as to whether or not the PRAI availed of a discretionary power provided for in Rule 159 to make enquiries or to give notices in Form 97. It is a discretionary power, and whether they did or did not exercise it in this particular case does not affect the central issue in this appeal which I have just described.

28. As to ground (f), namely that the trial judge erred in concluding that the appellant had not availed of a window of opportunity to obtain a copy of the instruments in question while he was still a registered owner on the folios, and during a period when he was aware of the proposed transfers, having been notified of same by the PRAI in advance of actual registration of those transfers, I once again consider that this finding by the trial judge is peripheral to the central issue arising on this appeal to which I have referred. Having said that, however, it is quite clear from correspondence which was made available to the court that the appellant was aware that the transfers to the new owners were the subject of an application for registration. The trial judge at para 16 of his judgment referred to this as an opportunity for the appellant to make representations to the PRAI by way of objection to the proposed registrations and he stated that this would "imply a right for the applicant and/or his advisers to have sight of the instrument or instruments the proposed registration whereof would be the subject of any object[ion] or representations during the time when such registration was pending". It is unnecessary for me to express a view as to the correctness or otherwise of that statement. It is unnecessary to do so for the purpose of deciding the central issue in this appeal, and any determination of that particular question should await a case in which it directly arises. But, it seems to me, that whether or not this represented a "window of opportunity" to obtain a copy of the instruments in question which was not taken up by the appellant, does not affect the overall question as to whether, as submitted by the appellant, he retains his entitlement to inspect or obtain a copy of an instrument registered on a folio even after he has ceased to be the registered owner.

29. In ground (g) the appellant takes issue with the trial judge's conclusion that the appellant had failed to establish "special circumstances" for the purposes of Rule 159 (9). I will come to that ground in due course when dealing with the central question arising the determination.

30. In ground (h) the appellant takes issue with the finding of the trial judge that in certain respects the appellant had displayed a lack of candour by not having brought to the attention of the court the correspondence indicating that he had the window of opportunity to have inspected the documents, to which I have just referred. The trial judge considered this to demonstrate a lack of candour which "removes him from the category of *bona fide* applicants who would satisfy the criteria to be met by the jurisprudence and the rules of 2012". I will address this ground of appeal as part of my consideration of the central issue.

### **The central issue**

31. Before addressing this particular question, it is helpful to refer to the judgment of Hogan J. in this Court in *Quinn & anor. v. Property Registration Authority* [2017] IECA 231. This judgment is very much on point and is understandably heavily relied upon by the appellant. In it, Hogan J. set out a characteristically clear and interesting history to the present iteration of the Land Registry Rules in relation to the entitlement to access to instruments registered on a folio.

32. In that case the Quinns were director and secretary respectively of a company referred to as Cloughvalley which was the registered owner of certain lands until the lands were sold by the bank as mortgagee in possession on foot of a mortgage entered into between Cloughvalley and the creditor bank. In *Quinn*, the applicants wished to raise questions as to the validity of the receiver's appointment and the lawfulness of the transfer of the company's property to the new owners by the mortgagee in possession, it having been sold without a court order and without the company's consent or the consent of the Quinns. For that purpose, they sought to inspect the instrument by which the property was transferred to new owners, and made an application to the PRAI under Rule 159(9) of the Rules of 2012. The PRAI responded to the application by requesting that they set out the special circumstances alleged to entitle them to inspect the instrument. In response the Quinns informed the PRAI, as appears from para 9 of the judgment, that they contended that the appointment of the receiver was flawed; that the receiver had purported to take possession of lands which were not owned by Cloughvalley; that the receiver had seized and disposed of plant and equipment which was not the property of the company; that they were experiencing difficulty in getting information from the receiver; and finally, that they were "answerable and accountable for the receiver's actions and any subsequent losses or damage to the company". In response to their application, the PRAI refused the application on the basis that they had not shown sufficient grounds as to why they were entitled to inspect the instrument, and that the "matters raised by you within said correspondence are not matters for the Property Registration Authority". The letter informing the Quinns of this decision went on to state that "the transfer deed contained within said instrument is not by a receiver but rather by a mortgagee in possession under its statutory powers". A second application for inspection was made subsequently in which it was contended that they were entitled to inspect and take copies of the relevant instrument "because either they or Cloughvalley had an interest in the property prior to the purported transfer of the same to the present registered owners and the disputed the validity of that transfer". As noted by Hogan J in his judgment, that application was refused as disclosing no special circumstances for the purposes of Rule 159 (9).

33. Following a refusal of their statutory appeal to the High Court against such refusal, their appeal to this Court was successful for the reasons explained by Hogan J. (Ryan P. and Finlay Geoghegan J. concurring). In his judgment, Hogan J. referred to the earlier

decisions of *In Re Fitzgerald* [1925] I.R.39, and *In Re Fairbairn* [1941] 75, each of which concerned an applicant for inspection who was suspicious that a certain transfer of property by the registered owner had been a fraudulent conveyance for the purpose of defeating a judgment creditor (the applicant). In *Re Fitzgerald*, O'Connor J. had referred to the common law right of inspection of what he considered to be public documents maintained on a public register but nevertheless considered that this right must necessarily be exercised within certain limits *i.e.* to persons who can prove that they have an interest. He considered that this was "a proper limitation because the uncontrolled inspection of public documents might result in a public nuisance [and] might lead to disturbance of office business, waste of the valuable time of public officials, disarrangement of records and general annoyance". Having said that however, O'Connor J. went on to hold that the judgment creditor had a sufficient interest to seek to inspect the documents in question, since "there were good grounds for the suspicion that it was merely a device for saving the defendant's property from some form of execution, and that the transaction was fraudulent". He considered that it could not be said "that his motive was idle curiosity or was in any respect unreasonable". Thus he was satisfied that the applicant "was actuated by a legitimate desire to expose a transaction which any reasonable judgment creditor would be justified in treating as *prima facie* fraudulent". As Hogan J noted, the Land Registration Rules 1937 came into force "in the wake of *Fitzgerald*" and expressly curtailed the public right to inspect documents lodged in the Land Registry by the provisions of Rule 187 therein. This rule in turn was made subject to Rule 190, which is in very similar terms to the current Rule 159 (9), requiring "special circumstances" to be shown by any person other than a registered owner before inspection will be permitted.

34. In his judgment, Hogan J. also referred to a passage from *McAllister, Registration of Title* (Dublin 1974) where the author stated in relation to the very similar provision of Rule 188 of the 1972 Land Registration Rules:

"Rule 188 now clearly limits further the right to inspection. Notwithstanding the decision in *Re Fitzgerald* ... it is submitted that a man's title deeds are his private property so that no one except those with a *genuine interest* should be allowed inspection of them and that efforts of would-be litigants, curiosity mongers and mischief makers should be discouraged as much as possible" [Emphasis provided].

35. Before reaching a conclusion as to whether the applicants in *Quinn* had established the existence of such "special circumstances" on their particular facts, Hogan J. stated the following at para. 35 of his judgment:

"35. One can sum up these developments by saying that whatever may have been the situation in 1925 when *Re Fitzgerald* was decided, every iteration of the Rules since 1937 to 2012 has, in one shape or another, endorsed the general confidentiality of the land registry system, subject to appropriate exceptions. Cases such as *Fairbairn* and *Nolan* are examples of this, as in both instances the applicants suspected that judgment debtors had sought to transfer lands for the purpose of avoiding creditors and sought access to the Land Registry files for the purpose of ascertaining the true state of affairs of the judgment debtor. *The real question in the present case is whether the bona fides of the present applicants can be said to parallel those of the applicants in those cases such as that it might be said that they have a genuine and legitimate interest in accessing the instruments held on the relevant Land Registry folio.*" [Emphasis provided].

36. Having indicated his view that the decision of the PRAI was in substance "one of interpretation of the 'special circumstances' provisions of Rule 159 (9) of the 2012 Rules", Hogan J. stated his conclusions as follows:

"38. The Authority appears, in effect, to have stated that the immediately previous registered owner of the lands is not entitled – or, at least, not generally entitled – to have access to the dealing instrument whereby the lands in question were transferred by a third party *i.e.* registered owner of a charge and that such do not constitute "special circumstances". While it may be admitted that these particular words do not readily lend themselves to precise definition, I think that the categories of special circumstances must nevertheless be understood by reference to the underlying objectives of the 2012 Rules.

39. The key objective here is to safeguard the confidentiality and privacy interests of the landowner. This, after all, was the significant change effected by the 1937 Rules and repeated in all subsequent versions of the Rules. But the 2012 Rules also acknowledge that there may be a category of person with a legitimate interest in a particular dealing and, accordingly, the Registrar is permitted to permit access where such special circumstances have been established. [Emphasis provided]

40. In the present case Cloughvalley (and, by extension, the Quinns on behalf of the company) is entitled to know the precise manner by which its lands were sold to a third party. It has a legitimate interest in securing this information, just as the applicant judgment creditors in *Fairbairn* and *Nolan* were entitled to ascertain the details of dealings by judgment debtors with their own lands. I consider Cloughvalley was entitled to obtain the document retained by the PRA as part of the public register and in the circumstances of this case it cannot be said that the legitimate privacy interests of the purchasers would accordingly be compromised, such as would normally be the case if any application were to be made by a curious third party with no legitimate interest in the matter. To that extent, therefore, I consider that, with respect, Abbott J. fell into error in suggesting that because the relevant copy of the dealing instrument might be obtained (by way of discovery, if necessary) in the other pending proceedings against AIB that the applicants had not on this account established the existence of special circumstances.

#### *Conclusions*

41. In conclusion, therefore, I consider that as the Quinns (on behalf of Cloughvalley the prior registered owner) had a legitimate interest in securing the instrument whereby the lands of the company were transferred by the registered chargee to a third party, I consider that they have established "special circumstances" within the meaning of Rule 159(9) of the 2012 Regulations.

42. I would accordingly allow the appeal and direct the PRA to provide Mr. and Ms. Quinn with a certified copy of the relevant dealing instrument, subject to the payment of the appropriate fee (if any)."

37. Very respectfully I agree with and adopt the analysis of Hogan J. as expressed above. In particular, for the purposes of the present appeal, I adopt the question which he considered to be "the real question", namely "whether the *bona fides* of the present applicants can be said to parallel those of the applicants in those cases [*Re Fitzgerald*, *Fairbairn* and *Nolan*] such as that it might be said that they have a genuine and legitimate interest in accessing the instruments held on the relevant Land Registry folio". I note in particular also his statement that "the 2012 Rules also acknowledge that there may be a category of person with a legitimate interest

in a particular dealing and, accordingly, the Registrar is permitted to permit access where such special circumstances have been established”.

38. It follows in my view that the appellant must show (i) that he has a *bona fide* purpose in having access to the instruments that he seeks to inspect *i.e.* a genuine and legitimate interest, and (ii) that the onus is upon him, as an applicant under Rule 159(9) of the Rules, to inform the PRAI in the first instance of what that purpose is so that it may properly satisfy itself that ‘special circumstances’ have been established. It goes without saying that the application must address the specific need to view the specific instrument and the need to access the instrument, as opposed to the register. In my view if the applicant is to show that special circumstances exist, normally the applicant should explain why access to the register is not sufficient to meet the circumstances of the case. It follows that on appeal to the High Court these matters must be established on the evidence. It is worth emphasising, lest there be doubt about it, arising from the references to cases such as *Re Fitzgerald, Fairbairn, and Nolan*, that “special circumstances” are not confined to cases where the special circumstances consist of a suspicion that the instrument represents a fraudulent conveyance. I do not wish to speculate as to what other reasons may or may not amount to “special circumstances” in any other case. But clearly there are a number of different scenarios that may be considered to come within that category. Each application must be considered on its own facts. But what needs to be emphasised, in my view, is that it is incumbent upon the applicant for inspection under Rule 159(9) of the 2012 Rules to put forward facts sufficient for the PRAI, or the Court on appeal, to consider whether those facts properly constitute special circumstances for the purpose of, and in the light of the objectives of the rule, as explained by Hogan J. in *Quinn*.

39. In my view the appellant has failed to discharge the onus upon him as stated above, and I would dismiss his appeal for that reason. I would differ from the trial judge as to the reasons for refusing his statutory appeal.

40. The trial judge questioned his *bona fides* because he had not brought the court’s attention to certain correspondence which indicated the “window of opportunity” that was available to the appellant to seek inspection or a copy of the instruments, thereby indicating a lack of candour, and for that reason found that he was not within the category of bona fide applicants who would satisfy the necessary criteria for the purpose of the Rules. I would most respectfully take a different view. While undoubtedly the appellant could at least have asked to be provided with a copy of the instrument at that point in order to allow him to fully consider its contents and meaning in order to decide if there were grounds for objection to its registration, I would not consider the fact that neither he nor his solicitor sought a copy or to inspect the instrument at that point as indicative of a present lack of bona fides, or indeed that the failure to draw the Court’s attention to the relevant correspondence is indicative of a relevant lack of candour. I would disagree with the conclusion of the trial judge as appears at para. 19 of his judgment that “having not availed of this window of opportunity the applicant cannot now show that there are special circumstances existing which should compel the Property Registration Authority from departing from the general rule of refusing to furnish copies of the instruments”. I do not think such considerations are relevant to the “real question” namely whether the appellant has established special circumstances for the purpose of the rule. Either there are special circumstances established or there are not. If there are then the appellant comes within the rule, and there is nothing in the rules, or the jurisprudence to indicate that, despite coming within the rule, there may be other factors that may, on a discretionary basis, be taken into account so as to disqualify an applicant from a right of inspection to which he/she is otherwise entitled.

41. Having said all that, I am nevertheless of the view that the appellant in the present case has not thus far established the necessary factual basis for being considered to have special circumstances for the purpose of the rule. In his applications for inspection he identified his special circumstances as being “I was one of the registered owners of [the folio] when the application to transfer was lodged”. Nothing more was stated, and when asked by the PRAI to explain his special circumstances in more detail nothing more was forthcoming except some oblique reference to a “criminal investigation surrounding the mortgage entered in the register at item number 3 at Part 3 of [the two folios]”, which is referred to in a letter from the appellant to the PRAI dated 13th March 2015. Even that is not a reference to any investigation into the sale of the property on foot of the instrument which he seeks to inspect.

42. In argument before this court, the appellant, who was representing himself, was pressed to explain in some further detail beyond the explanation contained in his application to the PRAI what his purpose was for wishing to inspect and/or obtain a copy of the relevant instruments. He steadfastly declined to expand upon his reasons, preferring to maintain his stance that the mere fact of having been previously a registered owner was *of itself* a “special circumstance” sufficient on its own to give him an entitlement to inspect and obtain a copy of the instruments under Rule 159 (9) of the 2012 Rules. He was adamant, when pressed on the matter, that no further explanation could be required of him. I am afraid that I cannot agree.

43. If the appellant was correct, it would have been very easy for Rule 159(1) to have stated that “the registered owner *or any previous registered owner* of property ... but no other person ... may inspect ... etc.” [my emphasis] if it was intended that a defined category of person *i.e.* a previous registered owner, was in every case and *as of right* entitled to inspect and obtain a copy of the instrument. But the underlined words are absent. Instead that rule provides very explicitly that it is only “the registered owner ... *and no other person*” [my emphasis]. It is in my view clear that if a previous registered owner wishes to inspect or obtain a copy of an instrument registered on a folio, he is not entitled to be granted that facility solely *qua* previous registered owner. He/she must establish an entitlement by providing sufficient information to enable a decision to be made, in the first instance by the PRAI, that some special circumstances exist to justify the granting of the application under Rule 159 (9) of the Rules. As I have said, the appellant has chosen not to do that, and has for his own reasons chosen to stand firm on his belief that he is not required to do more than show that he was a previous registered owner.

44. If the appellant changes his mind and is in a position to advance special circumstances in more detail sufficient to demonstrate an entitlement to inspection and a copy of the relevant instrument, there is no reason why he may not make a further application. But the onus is upon him to demonstrate those special circumstances other than by merely relying on his having been in the past a registered owner of the property in question.

45. For these reasons I would dismiss this appeal.