

Hundreds of home repossession cases may be struck out

High Court judge finds gap in 2009 land Act

FIONA GARTLAND

HUNDREDS OF property repossession cases could be struck out following a High Court ruling there was a "lacuna" – or gap – in legislation introduced in 2009.

On foot of the decision, counsel for one lender said his client would take a constitutional challenge of the Land and Conveyancing Law Reform Act 2009, which Ms Justice Elizabeth Dunne said yesterday may have had "unintended consequences".

The new Act was introduced on December 1st, 2009, and it only applied to mortgages created after that date, the judge found.

It repealed older conveyancing legislation and failed to save elements of the Registration of Title Act 1964 that would have allowed lenders to repossess properties with mortgages taken out before December 2009 that went into arrears after that date.

"It is not for the court to supply that which is not contained in the 2009 Act," the judge said.

Hundreds of borrowers who took out mortgages before the December date and who went into arrears after it will be affected by the judgment.

Ms Justice Dunne ruled on four test cases taken by the group defending mortgage holders, New Beginnings, and involving lenders Start Mortgages Ltd, Secured Property Loans Ltd and GE Capital Woodchester Homeloans Ltd.

The lenders had sought to repossess properties that were in mortgage arrears on the basis of a sec-

tion of the Registration of Title Act 1964. In two of the cases, borrowers were sent demands for vacant possession of the property prior to December 1st, 2009, while in the other two, the demands were after that date.

Ms Justice Dunne ruled that legal proceedings started prior to the December date could continue.

Proceedings started after December 1st, but where a demand for possession had been made prior to the date, it could



Ms Justice Elizabeth Dunne: "not for court to supply that which is not contained in 2009 Act"

also continue. But in cases where a demand had not been made until after the date, lenders had no right to apply for possession.

A further 24 cases involving seven other lenders had been held over to yesterday in advance of the ruling. Some of these were adjourned to the new term in November.

A number of counsel asked Ms Justice Dunne to give them time to consider the judgment and were given dates for mention later this week.

Counsel for GE Capital, Ronan Murphy SC, told the court his client would consider a constitutional challenge to the 2009 legislation on the basis of Ms Justice Dunne's decision.

He said there was an argument to be made about whether the Act could be valid, given it would deprive lenders of the remedy of repossession. He asked for time to consider notifying the Attorney General. The judge adjourned the case to November.

In a case taken by Bank of Ireland with a demand after the December date, the court was told the borrower was living in the US and had consented to an order for possession. Counsel for the lender asked the judge to consider making an order, given the consent.

"I can't do it and I'm not going to do it," Ms Justice Dunne said. "As far as I can see it, I have no jurisdiction to make an order. I will strike it out. I don't think there is anything else I can do in the matter."

Some 11 orders for possession were granted for older cases yesterday out of a list of 94.

These included an order granted to Start Mortgages against two brothers who mortgaged their parents' home.

The court was told they took out a €250,000 loan in April 2007 and defaulted on it in June of the same year.

The arrears stood at €76,000 and the brothers had left the home, but their parents were still living there. Neither the brothers nor the parents were represented in court.

Granting the order, Ms Justice Dunne gave a stay of execution of six months to allow the parents find alternative accommodation.