

THE HIGH COURT

[2023] IEHC 92

2021 No. 6567P

BETWEEN

ORLA FARRELLY

PLAINTIFF

AND

PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY

COMPANY

DEFENDANT

JUDGMENT of Ms. Justice Eileen Roberts delivered on 28 February 2023

Introduction and background to the proceedings

1. This is the defendant's application seeking an order remitting these proceedings to the Dublin Circuit Court.
2. The plenary summons was issued on 3 December 2021 and the statement of claim was served on the 14 December 2021. A defence was delivered on 1 April 2022. A notice for particulars and replies to particulars were also delivered in April 2022. That is where the pleadings rest.
3. In the plenary summons the plaintiff claims the following general reliefs:

- (a) A declaration that she has good and unencumbered title to an identified property in Rathfarnham (the '**Property**') which she says is her principal private residence;
 - (b) A declaration that the defendant has no interest in the Property;
 - (c) An order prohibiting the defendant from initiating any proceedings relating to the Property prior to the resolution of these proceedings;
 - (d) An order prohibiting the defendant from evicting or procuring the eviction of the plaintiff from the Property prior to the resolution of these proceedings.
4. In the statement of claim, an additional relief is sought for an order setting aside two previous High Court judgments in favour of Bank of Scotland (Ireland) Limited on foot of which judgment mortgages were registered against the Property.
5. The background to the plaintiff's claim is somewhat unusual. The statement of claim sets out that the plaintiff's parents bought the Property in 1980 subject to a mortgage in favour of Irish Permanent Building Society. This was the family home and the plaintiff lived there for much of her childhood. From the early 1990s the plaintiff, who was at that stage an adult, began to pay the mortgage payments for her mother (her father having passed away). On 3 January 1993 by deed of conveyance, the plaintiff's mother conveyed title to the Property from her sole name into the name of both her and the plaintiff as joint tenants. Thereafter the mortgage in favour of Irish Permanent Building Society was repaid in full and a deed of discharge confirming satisfaction of that mortgage was registered on 3 February 1994.
6. A second mortgage in favour of Allied Irish Banks plc was satisfied in 2006 and from that time the plaintiff and her mother enjoyed title to the Property free from any debts and/or encumbrances.

7. It is pleaded that neither the plaintiff nor her mother authorised any other person to take out any mortgages or otherwise borrow money using the Property as security.
8. In late 2021 solicitors instructed by the plaintiff carried out a title search on the Property and discovered that five judgment mortgages had been registered against the Property without the plaintiff's or her mother's knowledge. It appeared that the mortgagor defaulted on these mortgages. Various financial institutions had obtained judgment against the mortgagor and then registered judgment mortgages against the Property.
9. The mortgagor in each case was Mr Michael Lynn, a former solicitor who was struck off the register of solicitors. Mr Lynn has since been charged with multiple counts relating to the alleged theft of millions of euros from seven financial institutions through a scheme involving mortgage applications and letters of undertaking.
10. The two judgment mortgages the subject of these proceedings were registered by Bank of Scotland (Ireland) Limited. It appears that Bank of Scotland (Ireland) Limited obtained judgment against Mr Lynn in proceedings 2007/1944S and against Mr Lynn and his wife Bríd Murphy in proceedings 2007/1857S. On foot of those judgments Bank of Scotland (Ireland) Limited registered judgment mortgages for €530,224.41 and for €5,838,107.44 against the Property on 29 November 2007.
11. The plaintiff pleads that on 28 September 2018 Bank of Scotland (Ireland) Limited transferred its interest in loans and security held by it to the defendant. The defendant pleads in its defence that the proceedings referred to remain in the name of Bank of Scotland (Ireland) Limited. The defendant denies that any judgments obtained in those proceedings have been transferred to the defendant. Furthermore, the defendant pleads that even if Bank of Scotland (Ireland) Limited purported to transfer its interest in the

judgments or any security obtained on foot of the judgments to the defendant, such purported transfer was not effective in law as there was no compliance with the Supreme Court of Judicature (Ireland) Act 1877 (as amended).

- 12.** The defendant says it has no interest in the judgment mortgages registered by Bank of Scotland (Ireland) Limited and therefore cannot procure the discharge of those judgment mortgages as the plaintiff has requested. The defendant pleads that if the plaintiff wishes to vacate the judgment mortgages then the correct course is for the plaintiff to make an application to the Land Registry pursuant to the relevant provisions of the Land Registration Rules 2012 seeking the cancellation of any judgment mortgage registered against the Property over 12 years ago.
- 13.** The defendant further pleads that the plaintiff has issued these proceedings against an incorrect defendant as her complaints relate to judgment mortgages registered in favour of Bank of Scotland (Ireland) Limited and the defendant has no interest whatsoever in these judgment mortgages. It says the defendant has never sought to be substituted into the earlier proceedings nor has the defendant ever sought leave to issue execution in respect of the judgments obtained by Bank of Scotland (Ireland) Limited. The defendant does not intend to do so and it says these proceedings against it are misplaced and unnecessary and disclose no cause of action against it. The defendant says it is not party either to the proceedings or the judgment mortgages and that it has no power to voluntarily discharge them.
- 14.** The defendant also says (as noted in para 13 of the grounding affidavit of Darryl Broderick) that any judgment mortgage is registered as against the interest, if any, of Michael Lynn in the Property arising from judgments obtained against Michael Lynn. As the plaintiff confirms that Michael Lynn has no interest in the Property then there is no interest in the Property which is actually impacted by the judgment mortgages.

Taking the plaintiff's claim at its height, the defendant says she has suffered no actual loss or damage.

The legal principles governing remittal of proceedings

15. The remittal of proceedings from the High Court to the Circuit Court is governed principally by two statutory provisions: (i) section 25 of the Courts of Justice Act 1924; and (ii) section 11 (2) of the Courts of Justice Act 1936.
16. Section 25 of the Courts of Justice Act 1924 provides that, when any action is pending in the High Court which might have been commenced in the Circuit Court, any party to such action may, at any time before the commencement of the trial, apply to the High Court to have the action remitted or transferred to the Circuit Court. The High Court may retain such action if it considers that it is fit to be prosecuted in the High Court or it may remit or transfer the action to the Circuit Court.
17. Section 25 was amended by section 11 of the Courts of Justice Act 1936. Section 11(2)(a) provides that notwithstanding the provisions of section 25, an action shall not be remitted if the High Court is satisfied that, having regard to all the circumstances, notwithstanding the fact that such an action could have been commenced in the Circuit Court, it is reasonable that it should have been commenced in the High Court. This section appears to cover circumstances where an action involves issues which were capable of being resolved in the Circuit Court and fell within the jurisdiction of that Court but, for valid reason, should properly be dealt with in the High Court. The judicial interpretation of that section in *O'Shea v Mallow UDC* [1994] 2 IR 117 was that it removed the obligation from the High Court to transfer any action simply because the subject matter of the action fell within the Circuit Court jurisdiction. Morris J said at page 120 that

“the subsection provided for a circumstance where, notwithstanding the fact that the subject matter of the action falls within the jurisdiction of the Circuit Court, it is nevertheless reasonable and proper to retain the action in the High Court. If such circumstances exist then the High Court has the power to retain the action and not transmit it to the Circuit Court. It does not logically follow that, simply because the court makes an order transmitting the action for hearing to the Circuit, it was unreasonable to commence the proceedings in the High Court”.

18. In relation to claims for unliquidated damages, such as the present case, it is well established that the primary test to be applied by this Court on an application to remit is to consider whether the proceedings could have been commenced in the lower court and whether the relief claimed is within the jurisdictional limits of that lower court. The current jurisdictional limits for claims brought in the Circuit Court is €75,000 in respect of non-personal injury claims and €60,000 in respect of personal injury claims. In considering whether the relief claimed is within the jurisdictional limits of the Circuit Court I must determine this application not on the basis of what damages I believe will probably be awarded but rather on the basis of the maximum damages that could reasonably be awarded to the plaintiff taking her claims at their height.
19. The Supreme Court in *Ronayne v Ronayne* [1970] IR 15 confirmed that this remains the test notwithstanding the provisions of section 20 of the Courts of Justice Act 1936 which provides that in a remitted case the Circuit Court has jurisdiction to award damages in excess of its normal jurisdictional limits. Section 20 of the Courts of Justice Act 1936 has been amended by the provisions of section 16 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, but the effect remains the same.
20. Remittal is a discretionary remedy as was made clear by Hogan J in *AIB v Gannon* [2017] IECA 291, [2018] 2 IR 239. In that case the Court of Appeal noted that pursuant

to section 11(2)(a) of the 1936 Act, where it was reasonable to commence in the High Court an action falling within the jurisdiction of the Circuit Court, the High Court had the power to retain the action and not transmit it to the Circuit Court. However, the High Court had to be satisfied that specific circumstances existed that made it reasonable and proper to retain the action in the High Court and in a case with no special features, the High Court could not be so satisfied.

21. Hogan J noted at paragraph 23 of his judgment that

“It is clear that s. 25 of the 1924 Act reflected a legislative policy of what might be termed a form of legal decentralisation, so that litigants are thereby encouraged and facilitated in commencing their proceedings at the lowest level of the legal system appropriate to those proceedings”.

The arguments advanced by the parties

22. In seeking remittal of these proceedings, the defendant relies on the following:

- (a) The Property is situated in the Dublin Circuit Court’s jurisdictional area;
- (b) The market value of the Property is below €3 million and well within the jurisdiction of the Circuit Court;
- (c) The Orders sought in these proceedings which are capable of being granted could all be made by the Circuit Court;
- (d) Any conceivable award of damages which might be made, even taking the plaintiff’s claim at its height, would fall well within the jurisdiction of the Circuit Court;
- (e) The defendant is prejudiced by the increased costs involved in defending High Court proceedings.

- 23.** The defendant relies on the actions identified in the second column of the Third Schedule to the Courts (Supplemental Provisions) Act 1961 (as amended) as the basis for its application to remit these proceedings to the Circuit Court. In general, the defendant says that actions in respect of real property which has a market value below €3 million are most appropriately brought in the Circuit Court and the defendant relies in that regard on the amendment to the Courts (Supplemental Provisions) Act 1961 as inserted by section 45 of the Civil Liability and Courts Act 2004. In particular the plaintiff relies on column number 8 (which refers to “[a]n action in which the title to land comes into question, other than an action of ejectment”) as well as column 21 (which concerns “[p]roceedings for the rectification or setting aside or cancellation of deeds or other written instruments”) and column 27 (which refers to “[a]n action (in relation to property) claiming an injunction, otherwise than as ancillary to other relief”).
- 24.** The defendant does not suggest that the reliefs sought by the plaintiff are only amenable to hearing before the Circuit Court. It is accepted that both the High Court and the Circuit Court have concurrent jurisdiction to deal with matters falling within the provisions of the Third Schedule as set out above.
- 25.** The plaintiff submits that it was reasonable for her to have commenced these proceedings in the High Court. In that regard she relies on the following:
- (a) The judgment mortgages that the plaintiff seeks to have set aside amount to over €6 million;
 - (b) Those judgment mortgages were made by order of the High Court and the plaintiff fears that even if the Circuit Court were able to set aside such an order, that Court might be reluctant to do so;

- (c) The plaintiff seeks an order preventing the defendant from initiating any proceedings in any court including the High Court relating to her home prior to the resolution of these proceedings. The plaintiff fears that the Circuit Court cannot make such an order as it relates to the High Court.

Analysis and this Court's decision

26. Although not formally admitted by the plaintiff, there was valuation evidence before this court that the market value of the Property was significantly less than the jurisdictional threshold of €3 million identified in the Third Schedule to the Courts (Supplemental Provisions) Act 1961 (as amended), and I accept that evidence.
27. In those circumstances I am satisfied that the Circuit Court has jurisdiction to make the orders sought by the plaintiff in her plenary summons in relation to the declaratory and injunctive reliefs set out.
28. In relation to the plea which was advanced by the plaintiff in her statement of claim seeking to set aside previous High Court Orders, I do not believe that such a claim is properly maintained in these proceedings at all. The plaintiff cannot seek in these proceedings to set aside or vary final Orders made in the High Court in other proceedings to which the plaintiff was not a party. Indeed, neither was the defendant a party to those earlier High Court proceedings. It seems to me that in those circumstances the plaintiff simply lacks *locus standi* in these proceedings to have the previous High Court Orders in other proceedings set aside. There is no basis therefore for the plaintiff to insist on remaining in the High Court to pursue that relief in these proceedings. The amount said to be due under those previous High Court Orders does not change this position.

- 29.** Insofar as any possible claim for damages, including aggravated damages, is maintained by the plaintiff I do not believe that, even taken at its height, those damages could reasonably be expected to come within the jurisdiction of the High Court. There was no evidence of actual loss put before the court. Any damages for example for a possible claim of slander of title would not merit the High Court's jurisdiction in this case, even if such action could be maintained. The delays by the defendant in advancing their defence of these proceedings would not in itself attract an award of punitive or aggravated damages, as claimed. The defendant's evidence is that it has no interest in the judgment mortgages and has never sought to enforce them nor do they intend to do so.
- 30.** I do not believe in this case (however unusual the background facts), that any special circumstances or unusual points of law arise that would persuade this court to exercise its discretion to maintain these proceedings in the High Court, as for example arose in *Promontoria (Oyster) Designated Activity Company v Fox* [2020] IEHC 12.
- 31.** I therefore have decided to exercise my discretion in this matter to remit these proceedings to the Dublin Circuit Court.
- 32.** I will list this matter for mention on 14 March 2023 to deal with the form of Order and costs as well as any issues arising from this judgment.
- 33.** Finally, and on a practical note, this court would expect that insofar as some confirmation of the defendant's absence of interest in the judgment mortgages might be of assistance to the plaintiff in herself seeking to have the registration of the judgment mortgages removed from the Property, that this would be provided to her by the defendant.