Neutral Citation No: [2020] NICh 2 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **HOR10970** *Delivered:* **14/01/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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BETWEEN:

SANTANDER (UK) PLC

Plaintiff

and

EDWARD WARD
AND
ELLISH WARD

Defendants

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AND BY ORDER DATED 4 MARCH 2019

BETWEEN:

SANTANDER (UK) PLC

Plaintiff

and

EDWARD WARD
AND
EILISH WARD

Defendants

_____

AND BY ORDER DATED 14 JANUARY 2020

BETWEEN:

SANTANDER UK PLC

Plaintiff

and

EDWARD WARD
AND
EILISH WARD (AKA AILISH WARD)

Defendants

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HORNER J

INTRODUCTION

[1] This is an appeal from the decision of Master Hardstaff dated 16 November 2017 whereby he made the Order that Edward Ward ("Mr Ward") and "Ellish" Ward ("Mrs Ward"), who are husband and wife, surrender possession of the property situate at 32 Bannanstown Road, Castlewellan, BT31 9BQ ("the property") to the plaintiff, originally described incorrectly as Santander (UK) PLC but which should be Santander UK PLC for the reasons set out below.

[2] Mr Ward appealed the decision of the Master. Mrs Ward did not. This is important. Therefore, the issue of whether Mrs Ward should give up possession of the property is not an issue for the court. Mrs Ward was described as Ellish Ward in the Order of the Master.

[3] An Order was subsequently made by Madam Justice McBride on 4 March 2019 amending the name of Ellish Ward to Eilish Ward. Eilish Ward appears on the Mortgage Deed and she did provide an identification document (a driving licence I believe) to Mr McInerney, her solicitor, confirming her name as Eilish. In this appeal Mr Ward mentioned the fact that his wife's name had been incorrectly stated in the Order. At the hearing of the appeal I was shown a passport and a marriage certificate in which Mr Ward's wife is described as Ailish Ward. Mr Gibson on behalf of the plaintiff applied to amend the title to Eilish Ward aka Ailish Ward. After I had heard the evidence and had the submissions of the parties, I decided to give Mrs Ward an opportunity to be heard on whether or not the court should further amend the title of the proceedings to read Eilish Ward aka Ailish Ward. This also provided her with an opportunity to make submissions, if she so wished, on the proposed amendment of the plaintiff's name from Santander (UK) PLC to Santander UK PLC.

[4] I have no hesitation in amending the name of the second defendant, Mrs Ward to Eilish Ward aka Ailish Ward for the following reasons:

(a) There is no doubt that the Order was intended to be made against Mrs Ward, Mr Ward's wife who is the joint owner of the property.

(b) It was Mrs Ward, Mr Ward's wife, who had entered into the mortgage under the name Eilish.

(c) Mrs Ward is not in any way prejudiced by the change, if as Mr Ward claims, she is also known as Ailish.

(d) Her signature was witnessed by Mr McInerney who was satisfied from the documents of title provided that she was the person who had

signed the mortgage and was therefore Mr Ward's wife, the joint owner of the property.

(e) There is no dispute that the Wards as a married couple were advanced the loan by the Abbey National PLC ("Abbey National") and that the Abbey National subsequently became Santander UK PLC.

(f) I offered Mrs Ward the opportunity to make submissions as to the proposed amendments but she declined to so do.

There can be no doubt from the evidence that Mr and Mrs Ward executed the Mortgage as security for their indebtedness and that Mrs Ward, Mr Ward's wife, did so whether it is described as Ellish, Eilish or Ailish Ward and that she was the party who did so after she had provided proof of her identity, as her solicitor, Mr McInerney, testified. He was in no doubt that the person who executed the Mortgage Deed was Mr Ward's wife. In making the amendment and correcting the title of the proceedings in respect of her name I am ensuring that the Order expresses the manifest intention of the court: see Valentine at 15.12.

[5] I should also draw attention at this stage to an affidavit sworn in these proceedings by Edward Ward and witnessed by Nigel Bloomer dated 11 July 2016 in which Mr Ward stated under oath:

> "I, Edward Ward, joint owner of the property known as 32 Bannanstown Road, Castlewellan, Co Down, the other owner being Eilish Ward, have personal conduct of this action on behalf of both defendants."

So the sworn testimony of Mr Ward is that Eilish Ward was the joint owner and mortgagor of the property.

BACKGROUND

[6] This is an appeal from the decision of Master Hardstaff which was given on 16 November 2017. I am going to provide a brief history of the background to these proceedings which help explain the delay of approximately two years from the delivery of the decision by the Master to the conclusion of this appeal.

[7] Originally an all monies mortgage ("the Mortgage") was executed by Mr and Mrs Ward in favour of the AIB Group (UK) PLC which was secured on the property. This Mortgage was paid off and replaced with another all monies mortgage secured on the property in favour of the UCB Home Loans Corporation ("UCB"). This was registered on 11 April 2005. This was then replaced on 26 July 2007 when there was approximately £120,000 due and owing by the Wards to UCB by a loan of £160,999 secured by the present all monies mortgage on the property in favour of the Abbey National PLC.

[8] I heard evidence from Mr McInerney, a solicitor, who acted for both Abbey National and the Wards. He was a very compelling witness. Ms Melissa Serin swore an affidavit as the Special Litigation and property sales manager of the plaintiff. Mr Ward required her to give evidence. She told the court orally that she was involved in some aspects of residential lending. Firstly, for Abbey National and then for the plaintiff when it became Santander UK PLC. She had approximately 29 years' experience. She was however not involved in the original loan to Mr and Mrs Ward. But she had reviewed all the records and the mortgage account and her affidavit was based on her knowledge of the documentary records kept by the Abbey National and the plaintiff. She struck me as being someone upon whom the court could have complete confidence in her testimony. Mr Ward, who chose not to give oral testimony, had the opportunity to cross-question both of them. I made it clear to him that he was required to put his case to them if he was making a positive case such as for example that he had repaid the loan. It is still unclear why Mr Ward required her to give oral testimony unless it was to cause the plaintiff maximum inconvenience.

[9] Having heard their evidence under oath, I am completely satisfied from what they say that:

(a) The property was owned jointly by Mr and Mrs Ward who were husband and wife.

(b) The property was secured for £120,561.19 with UCB which was paid off by Mr McInerney on behalf of the Wards when he received the sum of £160,999 from the Abbey National.

(c) Costs and outlays of £454.04 were deducted by Mr McInerney for his professional input.

(d) The balance then remitted to the Wards was £39,704.76.

(e) The Wards have not paid any instalment from December 2011 to date.

(f) The Wards have spent the money advanced to them by the Abbey National on, inter alia, holidays.

[10] If either Mr McInerney or Ms Serin had erred in their testimony, it would have been a straightforward matter for Mr Ward to have disclosed his bank records or any bank account he had with his wife disproving Mr McInerney's evidence as to having paid off a loan of approximately £120,000 owed to UCB and then transferring the balance of approximately £40,000 to the Wards. In any event I have no doubt whatsoever that the Wards did receive the loan from the Abbey National which was secured on the property. This is further confirmed by the Land Registry entry,

which is conclusive evidence subject to certain exceptions which need not concern us here: see Section 11(1) of the Land Registration Act 1970.

[11] Proceedings had initially been instituted by the plaintiff on 2 April 2012, the last mortgage payment being made by the Wards in the sum of £568.86 on 28 December 2011. That is some 8 years ago. An Order for Possession was obtained by the plaintiff on 12 October 2012 from Master Ellison. On 26 March 2016 the bank sought leave to amend the Order of Possession and the originating summons due to a typographical error in the description of the premises. At that stage Mr Ward filed an affidavit on 11 July 2016 in which he asked the court to stay the proceedings and to discharge the Order because the proceedings had not been served upon him at his new address. This was accepted by all parties and an Order was made by Master Hardstaff setting aside the Order for Possession on consent. Fresh proceedings were then instituted but this time the plaintiff was described incorrectly by the plaintiff's previous solicitors as Santander (UK) PLC instead, as had been the case in the first set of proceedings as Santander UK PLC. This issue as to the description of the plaintiff has occupied the court for a very considerable period of time and is one to which Mr Ward, despite advice to the contrary, has returned to time and time again on the basis that it provides him with a complete defence to the plaintiff's claim. This is despite the fact that the unchallenged evidence is that the Wards borrowed £160,000 approximately from the Abbey National which became Santander UK PLC. This was secured on the property. Neither Mr Ward nor Mrs Ward, have made a mortgage repayment in respect of their outstanding indebtedness for over 8 years.

[12] Mr Gibson on behalf of the plaintiff made an application to amend the title of the plaintiff to Santander UK PLCc. I accede to Mr Gibson's application to amend the title to the proceedings to correct what is an obvious error, made by the plaintiff's previous firm of solicitors. I have no doubt from the evidence that it is a bona fide error. There is no injustice to Mr and Mrs Ward which cannot be satisfied in requiring the plaintiff to pay any costs which are occasioned by the amendment. Accordingly, I order that any additional costs arising from the making of this amendment will have to be borne by the plaintiff. The title of the plaintiff should be amended to Santander UK PLC. This accords with the Practice Direction of the Lord Chief Justice of 4 February 2010 that Santander UK PLC should be substituted for Abbey National PLC which changed its name to Santander UK PLC on 11 January 2010.

[13] I am wholly satisfied that Santander UK PLC is the successor in title to Abbey National PLC and I accept in its entirety the affidavit of Mr Thomas Ranger in respect of the loan given to the Wards secured on the property. The insertion of brackets round UK in the title Santander (UK) PLC has caused no prejudice to Mr Ward who borrowed, with his wife, I find £160,000 approximately from the Abbey National to repay a loan of approximately £120,000 from UCB and to receive the benefit of an additional payment of approximately £40,000 in cash which the

Wards were able to spend as they chose. The Wards, I repeat, have not paid any instalment due in respect of the money loaned to them from December 2011 and have offered no good reason as to why they should be excused payment of the instalments as they fall due under the Mortgage.

[14] Mr Ward was originally represented by the solicitor Dominic McInerney. Then O'Neill Solicitors Ltd came on record for Mr Ward. These solicitors have since come off record and Mr Ward has represented himself as a litigant in person and purports to represent his wife who has not appeared at any of the hearings. Mr Ward has no right to represent anyone other than himself. This case has provided an object lesson in how not to deal with personal litigants. The court can expect that solicitors will ensure that the name of their client, the lender, is correctly stated in the title to the pleadings. The court can also reasonably expect that the name(s) of the borrower(s) will also be correctly stated. Personal litigants are unlikely to agree to amendments and this means that the proceedings will have to amended formally. This requires service to be effected in accordance with the Rules. This can often cause delay. The egregious errors in this case were not the fault of the present solicitors who I absolve from all blame and who have strived to correct mistakes made by others. But these mistakes should never have occurred in the first place. The legal professions need to appreciate that with personal litigants there can be no short cuts and that they need to have their proofs in order.

[15] A Notice of Appeal dated 21 November 2017 set out the basis upon which Mr Ward relied on appealing the order of possession of Master Hardstaff. The grounds of appeal were stated to be as follows:

(i) The learned Master erred in fact in that he failed to take account of and/or failed to give sufficient weight to the following issues:

    (a) The plaintiff/respondent was guilty of permitting a lack of consideration of the appellant/defendant's income, specifically that there appears to be no consideration of the income by way of examination of payslips or accounts and as such this could not in any circumstances be considered to be reasonable lending. Such actions are in breach of various sections of the Mortgage Conduct of Business Rules which covers a relationship between mortgage lenders and borrowers in the United Kingdom.

    (b) The Master found that the relevant mortgage provided to the appellant/defendant was originally a residential mortgage product and that, given the house was currently being rented, this amounted to a breach of the agreement and as such permitted the plaintiff/respondent's possession as they could plead breach of this agreement. It is the submission on behalf of the appellant/defendant

that, whilst this may be a breach of the term, it does not make the mortgage agreement void, nor is a ground for repossession.

(c) In respect of the lands to which the mortgage relate (sic). The security is registered against the entire folio and it would not be equitable that the plaintiff/respondent should obtain possession of the entire folio. Given the plaintiff/respondent had taken an excessive security, this establishes an unfair relationship pursuant to 140A to 140C of the Consumer Credit Act 1974.

(d) The Master held that he was not prepared to let the appellant/defendant go through the mortgage application and draw his attention to the deficiencies in it because he feels that the appellant/defendant got a benefit from such an application, namely the discharge of his UCB loan.

(e) A loan was taken out with Abbey with the intention of clearing joint credit card debts, however the monies were used to carry out improvements to the former matrimonial home and to pay for several holidays.

[16] None of these grounds of appeal were pursued before me, although there was some desultory complaint about the consequences which should follow from renting a property when the Mortgage deed precludes the ability to lease and the requirement that it is used as a residence by the borrowers. The affidavit filed by Mr Ward on 11 July 2016 said:

> "I made the plaintiff aware that I was no longer resident at 32 Bannanstown Road, Castlewellan, Co Down, in or around August 2011. At that time, I was trying to raise monies to pay the plaintiff by way of moving out of the property in order to rent it out. This rental started 15 August 2011. I beg leave of the court to refer to attached exhibit copy of the Landlord Payment Notification from the Housing Executive. This clearly shows a JD Ward was resident at Bannanstown Road, Castlewellan, and Mr E Ward (myself) being resident at 29 Bannanstown Road, Castlewellan."

[17] Thus on the evidence adduced by Mr Ward, he clearly breached, inter alia, Condition 20 and 21 of the Mortgage by renting the property without the consent of the plaintiff. I pause to note that this on its ownt is a breach of a condition of the Mortgage. Such a breach may entitle the plaintiff to possession of the property. I also note that it was Mr Ward's case on appeal that he had received the benefit of the loan from Abbey National but that instead of spending it on clearing joint credit card

debts, as he claimed he was going to do, he decided to use it, inter alia, to pay for holidays. Of course, this is a rehearing and Mr Ward can make whatever case he wants on the appeal. However, why Mr Ward thinks the fact that he spent some of the loan he received from the plaintiff on holidays is a defence to the claim brought by the plaintiff has never been explained.

[18] Following O'Neill Solicitors Ltd coming off record on 16 April 2018, Mr Ward submitted a supplemental affidavit which exhibited a document entitled a Certificate of Re-scission (sic) and a Statement of Truth. This states:

> "Let it be known to all, that this certificate formally declares that all and any contracts, all and any instruments derived from same, and all powers and appointments derived from same, and all past commercial dealings, between all and any legal persons: applicant of the edward:ward estate, allegedly in contract, with an entity known as Santander UK Plc: respondent have been re-scinded in full, abinito, as if the contracts never existed, as if the estates lawful entitlement:
>
> And let it be known to all, that this certification is derived wholly from the applicant's/affiants unrebutted correspondences to the respondent, using the maxim "silence is consent, verified by the signed, sealed and delivered, registered judgment/statement of truth, as witness to the seal by the jurats of the court of record convened on **28 March 2018 AD**, and notarized for validity."

See also other various applications and motions such as the one to strike out the matter in it's (sic) entirety and the Trustor Notice which apparently permits Mr Ward to collect £150,000 for fees. He also complains about the appointment of Mr Gibson by the plaintiff obviously unaware that Mr Gibson is not appointed by the plaintiff but retained by A & L Goodbody, the plaintiff's solicitors. Mr Gibson is not a trustee de son tort as Mr Ward appears to be alleging. As late as 13 January Mr Ward purported to serve on the court but, not as far as I understand, on the plaintiff a document entitled "Special Supplemental Affidavit". It states inter alia
"As a man I do not undertake surety for the EDWARD WARD Persona: created by solicitation; to trust trespass:"

[19] These documents and the affidavit which accompanies this "Certificate of Re-scission" bear some similarity to those documents filed on behalf of those self-representing litigants known as "Freemen". All the arguments advanced by Mr Ward before me were without merit, factual or legal. I did offer Mr Ward the

opportunity to provide me with copies of some authorities he referred to in court but which were of an obscure nature. He chose not to provide those copies as requested but instead saw fit to ask me to recuse myself. The basis of this application so far as I could understand was that he did not consider I would agree with his submissions. This is not a basis for recusal. If Mr Ward is dissatisfied with my decision or indeed, that of Madam Justice McBride, he is free to appeal such a decision to the Court of Appeal.

[20] Mr Ward did not give evidence, although as I have said, I offered him the opportunity to do so. I have satisfied myself that the Mortgage was duly executed in accordance with Rule 175(1) of the Land Registration Rules. I have looked at all the other different claims put forward before me by Mr Ward. I am satisfied that none of these have any merit whether legal or factual, whatsoever. Indeed, it is clear beyond peradventure that the Wards borrowed £160,000 secured on the property, used £120,000 approximately of that to pay off an earlier loan secured on the property with UCB, to pay their solicitor's fees and then spent the balance that is approximately £40,000 on themselves. They have failed to make any repayment for 8 years and continue to have possession of the property without paying any of the instalments as they fall due. It seems that the property may well be leased and that the Wards are receiving rental payments in respect of it. There is no doubt that it is in the interests of Mr and Mrs Ward to delay this matter as long as possible. I also note that the arrears now amount to more than £50,000.

[21] Furthermore, it is important to note that no challenge whatsoever was made to the UCB home loan charged on the properties which was discharged with the money received from the Abbey National. The unchallenged evidence is that this sum of £120,000 approximately was paid off by the plaintiff on behalf of the Wards as previously described. In *Burtson Finance v Speirway Ltd (In Liquidation)* [1974] 3 AER 735 Walton J said:

> "Where A's money is used to pay off the claim of B, who is a secured creditor, A is entitled to be regarded in equity as having had an assignment to him of B's rights as a secured creditor … It finds one of its chief uses in the situation where one person advances money in the understanding that he is to have certain security for the money he is advanced, and for one reason and another, he does not receive the promised security. In such a case he is nevertheless to be subrogated to the rights of any other person who at the relevant time had any security over the same property and whose debts have been discharged in whole or in part by the money so provided by him."

[22] Millet LJ in *Boscawen v Bajwa* [1996] 1 WLR 328 at 335B-D put it thus:

> "Subrogation … is a remedy, not a cause of action … It is available in a wide variety of different factual situations in which it is required in order to reverse the defendant's unjust enrichment. Equity lawyers speak of a right of subrogation, or of an equity of subrogation but this merely reflects the fact it is not a remedy which the court has a general discretion to impose whenever it thinks it just to do so. The equity arises from the conduct of the parties on well settled principles and in defying circumstances which make it unconscionable for the defendant to deny the propriety interest claimed by the plaintiff. A constructive trust arises in the same way. Once the equity is established the court satisfies it by declaring that the property in question is subject to a charge by way of subrogation in the one case or a constructive trust on the other."

[23] If I am wrong and the plaintiff did advance money to the Wards but did not obtain a valid security on the property then equity demands that the property in question should be subject to a mortgage by way of subrogation in the sum of the £120,000 approximately being the debt owed by the Wards to UCB. It follows therefore that even if Mr Ward is correct and the present mortgage is for some reason, which has not been brought to my attention unenforceable, the plaintiff is still entitled on the basis of the law relating to subrogation and mortgages to possession of the property: see 43.2 of Fisher and Lightwood's Law of Mortgage (15th Edition).

FURTHER THOUGHTS

[24] It is not altogether clear whether the premises had been leased or whether the tenant is an invention of Mr Ward to try and make life more difficult for the plaintiff; or whether there was a tenant originally but that he or she has now left the premises. The court is not in a position on the basis of the present evidence to reach a concluded view. However, as I have said, a condition of the Mortgage prohibits the Wards from granting a lease. Accordingly, the Wards could not evict their tenant, if he can pay the rent and observe the covenants of his lease with them. However, the plaintiff is entitled to seek an order for possession against such a tenant from the court because the Wards are not in a position to bind the plaintiff in purporting to grant a lease to such a tenant.

[25] If there is a rent paying tenant of the premises then I express some surprise that the plaintiff has taken no steps to ensure that it, and not Mr and Mrs Ward, receives any rent that may be paid from such a tenant. However, that is a matter

between the plaintiff and the Wards and does not in any way affect the plaintiff's right to possession.

CONCLUSION

[26] The evidence establishes very clearly that Mr and Mrs Ward borrowed approximately £160,000 from the plaintiff and that this loan was secured on the property. In breach of the conditions of the Mortgage they have:

(a) Failed to make any repayments for more than eight years.

(b) Apparently rented it out and retained the rental payments.

There was no effective challenge to those facts. Various arguments had been raised which I have looked at in detail and determined that they are devoid of any merit, whether legal or factual. I am satisfied that the Mortgage was validly executed. Even if it was not, the plaintiff is still entitled to possession of the property on the basis that it should be subrogated to the rights of the earlier incumbrancer, UCB. The Wards had no defence to the plaintiff's claim. In those circumstances the appeal from the Master is dismissed and I affirm the Order of the Master.