Neutral Citation No: [2021] NICh 10	*Ref:* **HUM11560**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **23/06/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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Between:

LEEDS BUILDING SOCIETY

Plaintiff

and

GRAHAM MATTHEW SPEAK

Defendant

_____

Keith Gibson (instructed by Shoosmiths) for the Plaintiff
The Defendant did not appear and was not represented

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HUMPHREYS J

Introduction

[1] The plaintiff in these proceedings is a building society which commenced two sets of proceedings against the Defendant on 14 March 2018, both of which seek an Order for Possession of premises on foot of security which the plaintiff claims to hold. The first premises are situate at and known as 17 Parkside Gardens, Sion Mills, Co. Tyrone; the second premises are 63 Parkside Gardens, Sion Mills.

[2] Each of the proceedings was commenced by originating summons under the procedure prescribed by Order 88 of the Rules of the Court of Judicature (NI) 1980 ('the Rules'), and grounded on an affidavit sworn by Mr Robert Talbot, a Mortgage Account Manager with the plaintiff.

[3] In each case, the defendant raised a number of issues and on 22 March 2019 the Chancery Master removed the cases to the Judge's list for determination. Before the Court on 3 June 2021 were the originating summonses for possession and also applications brought by the defendant to remit the proceedings to the County Court and also to strike out the proceedings pursuant to Order 18 rule 19 of the Rules.

[4] On 2 June 2021 the court received a lengthy communication from the defendant alleging that various legal representatives and judicial officers had engaged in unlawful and criminal acts. He alleged that the hearing would be a *'sham trial'* and he would not be taking any part in it. The defendant did not appear at the hearing on 3 June but full account was taken of all evidence and submissions made by him during the currency of the proceedings.

The Security

[5] The plaintiff's evidence was that a Deed of Charge was executed by the defendant on 31 October 2006 whereby he charged the property comprised in Folio TY16651 Co. Tyrone, namely 17 Parkside Gardens, with payment of all monies due by him to the plaintiff. This was duly registered in the Land Registry on 7 December 2006.

[6] The Charge was subject to and incorporated the Plaintiff's Mortgage Conditions (Northern Ireland) 2005. Insofar as is material these provided:

- Clause 3.1(a) – *"You agree that you will punctually pay to us…Monthly Payments comprising interest on the Advance at the Current Rate and (where appropriate) instalments of the Advance and so that by the end of the Repayment Period you will have paid the Whole Debt to us…"*

- Clause 12.3 – *"If any of the following events occurs then…the Whole Debt shall immediately become due and payable…If you are in default of paying 2 or more of the Monthly Payments"*

- Clause 18.1 – *"We may at any time in our discretion and without obtaining your consent or the consent of anyone else transfer to any other person the benefit of all or any part the Whole Debt, the Mortgage, any related security and all or any legal or equitable rights under any of the same*

[7] A further Deed of Charge was executed by the defendant on 11 July 2008 whereby he charged the property comprised in Folio TY21853 Co. Tyrone, being the premises at 63 Parkside Gardens, with payment of all monies due by him to the plaintiff. This was registered in the Land Registry on 26 August 2008.

[8] The Charge was subject to and incorporated the plaintiff's Mortgage Conditions (Northern Ireland) 2007. These contained identical provisions to those set out at paragraph [6] above, save that the provision at clause 12.3 was contained in clause 13.3 in the 2007 Conditions, and the clause 18 rights were to be found in clause 19.

[9] In each case, the Charge was to secure a specific advance. In respect of 17 Parkside Gardens, this was £80,000 over a term of 35 years; whilst that in relation to 63 Parkside Gardens was £69,600 over 20 years.

The Order 88 Proceedings

[10] The two originating summonses for possession of the charged premises were issued on 13 March 2018. In each case, the defendant entered an Appearance dated 19 March 2018.

[11] In any case where proceedings are commenced by originating summons, Order 28 rule 2 of the Rules prescribes that a plaintiff must seek an appointment for the attendance of the parties before the Court for the hearing of the summons. The plaintiff must then serve a notice of appointment to hear originating summons on the defendant. This procedure is modified by Order 88 rule 4, in relation to proceedings commenced by a mortgagee or chargee, to require such a notice of appointment to be served on a defendant who has not entered an Appearance.

[12] As such, therefore, a defendant in an Order 88 action will be served with a notice of appointment whether or not he has entered an appearance.

[13] In these proceedings, the solicitors then acting for the plaintiff erroneously served the defendant with notices of appointment to hear originating summons which stated that the defendant had *"failed to enter an Appearance."*

The Legal Principles

[14] Section 41(1) of the Land Registration Act (NI) 1970 ('the 1970 Act') permits the owner of registered land to charge the land with payment of money. This does not entail the demise of any interest in the land to the lender but gives rise to the powers contained within Schedule 7 to the 1970 Act. Paragraph 5 of Part 1 of this Schedule provides:

> *"5(1) On registration of an owner of a charge on registered land for the payment of any principal sum of money, with or without interest, the owner of the charge shall have all the rights and powers of a mortgagee under a mortgage by deed within the meaning of the Conveyancing Acts, including the power to sell the estate which is subject to the charge, and any deed creating such a charge shall be liable to stamp duty as if it were such a mortgage.*
>
> *(2) The registered owner of a charge may apply to the court for the possession of the registered land, the subject of the charge, or any part of that land, and –*

(a) on such application, the court may, subject to sub-paragraph (3), order the possession of the land, or that part thereof, to be delivered to him; and

(b) upon so obtaining possession of the land or, as the case may be, that part thereof, he shall be deemed to be a mortgagee in possession.

(3) The power conferred on the court by sub-paragraph (2) shall not be exercised –

(a) except when payment of the principal sum of money secured by the deed of charge has become due and the court thinks it proper to exercise the power; or

(b) unless the court is satisfied that, although payment of the principal sum has not become due, there are urgent and special reasons for exercising the power.

The Remittal Applications

[15] Section 31 of the Judicature (NI) Act 1978 enables the High Court to remit any civil proceedings to the County Court where the court is satisfied that the subject matter of the proceedings is or is likely to be within the limits of the jurisdiction of the County Court. This is subject to the important proviso that:

> *"The court is of the opinion that in all the circumstances the proceedings may properly be heard and determined in the county court."*

[16] By Article 12 of the County Courts (NI) Order 1980, the County Court has jurisdiction to hear and determine any action for the recovery of land where either the NAV of the land does not exceed £4,060 or the capital value of the land does not exceed £400,000.

[17] The evidence relied upon by the defendant in support of his application to remit these two sets of proceedings was to the effect that the two properties were of capital value of well under the £400,000 threshold.

[18] In any action involving the repossession of a dwelling house, the High Court enjoys a discretion to adjourn the proceedings or suspend an order for possession in order to permit the borrower to pay the sums due within a reasonable time, pursuant to section 36 of the Administration of Justice Act 1970 and section 8 of the Administration of Justice Act 1973. Significantly, these powers are only enjoyed by the High Court in Northern Ireland and not the County Court.

[19] There is also, pursuant to Order 88 of the Rules, an established regime for the orderly conduct and disposal of repossession proceedings. Such applications are generally dealt with by the Master, with more complex cases and appeals coming before the Chancery Judge. The Chancery Master has extensive experience of the issues which arise in such cases, and is most familiar with the exercise of the statutory discretion referred to above.

[20] These factors explain why lenders in this jurisdiction invariably issue repossession proceedings in the High Court. It would manifestly be adverse to the interests of home owners and borrowers to have such cases litigated in the County Court, both procedurally and by reason of the absence of the statutory discretion. For these reasons, I am not satisfied that these proceedings may properly be heard and determined in the County Court and I refuse the remittal applications.

The Strike Out Applications

[21] The defendant applied to strike out both proceedings pursuant to Order 18 rule 19(1) on the grounds that an order for possession could not be granted without the originating summons being signed by an authorised officer of the plaintiff. To hold otherwise, it was alleged:

> *"Would be a fraud on the Court, and a miscarriage of justice and in violation of the rule of law and of equity."*

[22] By a combination of Order 6 rule 6(6) & Order 7 rule 5(2) of the Rules, which prescribe the general provisions for originating proceedings, there is no obligation on an officer of a plaintiff company to sign an originating summons prior to its issue.

[23] The defendant also averred that the notices of appointment, which alluded to appearances not having been entered, were 'illegal'. It will be evident from the observations above that this cannot be correct given that notices of appointment would have been served in any event. There was an admitted error on the Notices but under Order 2 rule 1 of the Rules this is treated as an irregularity and does not serve to nullify the proceedings or render them an abuse of process.

[24] Similarly, the defendant complains that affidavit evidence was served outwith the statutory time limits laid down by Order 28. The failure to comply with time limits is not fatal to any proceedings. The Court has jurisdiction under Order 3 rule 5 of the Rules to extend the time for the service of any document and will do so where the interests of justice require. It would manifestly not be in the interests of justice to deny a party relief to which it would otherwise be entitled because an affidavit was not served within a time limit set out in the Rules, unless such time limits had been repeatedly and contumaciously flouted or an order of the court not complied with.

[25] The defendant advanced other claims of breach of Order 41 in relation to the form of the affidavit evidence relied upon by the plaintiff which were wholly without foundation.

[26] It was claimed that the plaintiff had illegally acquired a power of attorney via the terms and conditions of the charges. The basis for this contention was difficult to define but, in any event, nothing in this litigation turned on any document executed or thing done by the plaintiff in the defendant's name.

[27] Furthermore, the defendant submitted a 'special supplemental affidavit' attaching a 'special replying counter-Notice' and a 'notice for De Son Tort'. This material was clearly inspired by the Freemen of the Land school of jurisprudence which has been repeatedly and widely condemned in these courts, and throughout the common law world, as representing nothing more than legal gibberish and efforts to treat the legal system with contempt. There is nothing within these documents which advance the case which the defendant seeks to make.

[28] The issue of the plaintiff's locus standi and securitisation requires further consideration and I will return to this later in the judgment.

[29] The court's jurisdiction to strike out proceedings under Order 18 rule 19 is limited to those which it finds to be "*obviously and almost incontestably bad*" – see, for example, *O'Dwyer v Chief Constable* [1997] NI 404. The defendant's applications do not begin to meet that threshold and I dismiss them.

The Evidence

[30] At the hearing of these originating summonses, the court considered all the affidavit evidence filed on behalf of the plaintiff and the various 'Statements of Truth' submitted by the defendant. It also had the benefit of hearing oral evidence from Danielle Johnson and Darren Murray, both duly authorised officers of the plaintiff.

[31] Ms Johnson is employed as a Mortgage Services Collections Team Leader and she had access to the electronic records and accounts of the dealings between the plaintiff and the defendant. Such documents revealed that the defendant had not made any payment in respect of either of the loans since August 2017. The arrears in respect of the loan secured by way of charge over 17 Parkside Gardens was £16,821.62 and those in respect of 63 Parkside Gardens £21,629.08. No proposals had been forthcoming from the defendant to address the arrears.

[32] The balance due and owing on each account at the date of hearing was:

17 Parkside Gardens	£92,526.97
63 Parkside Gardens	£87,648.18

[33] Mr Murray is employed by the plaintiff as a Wholesale Funding Manager and he gave evidence that he was responsible for the setting up of the plaintiff's Covered Bond Programme in 2006. This entails a collateralised form of funding whereby the plaintiff borrows from investors and gives them a guarantee from a Covered Bond LLP in the event the plaintiff defaults on the bonds as issued. Mortgages and charges are assigned in equity to the LLP and legal title passes in the event of default on the bond. Mr Murray stated that the assignment of equitable rights in security portfolios is widespread throughout lenders in the UK.

[34] In the instant case, the charge over 17 Parkside Gardens entered into the Covered Bond Programme but was removed from it on 29 December 2017 as it had fallen into arrears. The terms and conditions of the Programme require that any security with over 3 months' arrears be removed from it.

[35] The beneficial interest in the charge over 63 Parkside Gardens was assigned to the Bank of England as collateral but on 10 February 2015 the charge was removed from this pool and both legal and equitable title to the charge vested thereafter in the plaintiff. I was satisfied that the evidence given by Mr Murray satisfied the requirements laid down by Horner J in *Swift Advances –v- McCourt* [2012] NICh 33.

Consideration

[36] It is well established in law that a lender may transfer the interest which it has in a mortgage or charge to a third party. This may entail transfer of the debt itself and/or the security interest. The transfer of the security interest may be of the legal or equitable interest or both – see *Santander v Carlin* [2020] NICh 11, at paragraphs [16] to [26]. In this case, that right was enshrined in clauses 18 and 19 of the plaintiff's terms and conditions.

[37] In these cases, the uncontroverted evidence was that both legal and equitable title to the debt and charge rested with the plaintiff at the date of issue of proceedings and at the date of hearing.

[38] I have no hesitation in finding that the plaintiff had *locus standi* to bring each of these actions.

[39] The evidence before the court was clear that the defendant had fallen very considerably into arrears and had failed to make any payment since August 2017. By the terms and conditions of the charges, the whole sum owed by him to the plaintiff on each account had fallen due. The plaintiff was thereby entitled to apply under paragraph 5 to Part 1 of Schedule 7 of the 1970 Act for orders for possession. The court must consider whether it is proper to exercise the power contained therein to make such orders. Having carefully reflected on all the material relied upon by the defendant, the court is satisfied that the making of the orders for possession is

entirely proper. The defendant has been in breach of his obligations to the plaintiff for almost 4 years and no proposals have been made for the discharge of the arrears.

[40] In such circumstances, the court declines to exercise its discretion under the Administration of Justice Acts to suspend the orders for possession.

[41] Accordingly, the court orders that the defendant do deliver up possession of the premises:

(i) Situate and known as 17 Parkside Gardens, Sion Mills, Co. Tyrone, registered in Folio TY16651 Co. Tyrone; and

(ii) Situate and known as 63 Parkside Gardens, Sion Mills, Co. Tyrone, registered in Folio TY21853 Co. Tyrone.

[42] The plaintiff is entitled to add the costs of these proceedings, including the applications brought by the defendant, to the sums secured by the charges.