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	Delivered: 19/09/2025

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

KER PROPERTY MANAGEMENT LTD

Plaintiff/Respondent

and

JOHN McKEEVER and MICHELLE McKEEVER

Defendants/Appellants

The Appellant, Michelle McKeever, appeared in person on behalf of both Appellants
Ms Moran (instructed by The Elliott Trainor Partnership Solicitors) for the Respondent

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Before: Treacy LJ and Colton J

COLTON J (*delivering the judgment of the court*)

Introduction

[1] By these proceedings the appellants appeal the order made by Mr Justice Huddleston on 2 December 2024, in the following terms:

> "IT IS ORDERED that the plaintiff, Ker Property Management Ltd, do recover possession of the lands as described in the originating summons as the land situate at 48-49 The Square, Crossmaglen, Co Armagh, and as contained in folio 16777, Co Armagh, and that the defendants, John McKeever and Michelle McKeever, and all persons in occupation of the said lands, do give possession of the said lands on or before the 10th day of December 2024, and that the defendants do pay the plaintiff's costs, such costs to be taxed in default of agreement."

Background

[2] This appeal concerns an all too familiar example of a protracted dispute relating to the default by litigants in person of their obligations to financial institutions, who seek to obtain and enforce orders arising from such default.

[3] As is common in such disputes, a large volume of documentation has been generated with wide ranging, diffuse and repetitive points being pursued.

[4] That said, for the purposes of this appeal, the matter is relatively straightforward.

[5] The dispute relates to two properties at 48/49 The Square, Crossmaglen ("the property"). In 2007, the defendants/appellants, as the registered owners of the property, approached their local branch of the Bank of Ireland to seek financial support for a scheme whereby they would demolish the properties which were then derelict and construct five residential units and two commercial units. Discussions ensued between the defendants/appellants and the Bank of Ireland which ultimately resulted in a loan facility of £450,000 from the bank. The security for the loan comprised, inter alia, a first legal charge on 15 June 2007 ("to be registered in favour of Bank of Ireland over a property at 48/49 The Square, Crossmaglen – registered owners John and Michelle McKeever"). The charge was registered in the Land Registry in favour of the Governor and Company of the Bank of Ireland on 17 December 2007. This security was transferred to Bank of Ireland (UK) plc and so registered on 20 January 2011.

[6] Drawdown of the loan began on 15 June 2007. At that stage the loan account was recorded as being £450,168.54 overdrawn.

[7] The defendants/appellants defaulted. The Bank of Ireland demanded repayment of the loan, and subsequently appointed receivers, being Messrs Kelly and Best in February 2013.

[8] In May 2014, the Bank of Ireland issued proceedings against the defendants/appellants claiming, inter alia, the following:

(a) As against Michelle McKeever £430,463.74 damages with interest;

(b) A declaration that the receivers had been validly appointed and that the receivers may let the property and/or sell the property;

(c) An injunction restraining the defendants from trespassing on the property; and

(d) An order that the defendants do provide possession of the property.

[9] At this point, it is relevant to note that the bank only sought damages against Michelle McKeever as John McKeever was adjudicated bankrupt on 12 October 2009. In June 2010, the trustee in bankruptcy of John McKeever transferred his interest in the property to Michelle McKeever for the consideration of £1 but subject to the charge.

[10] The Bank of Ireland's action was prolonged. It involved multiple hearings before three High Court judges and the Court of Appeal. Finally, it was heard and determined by Mr Justice Simpson, who after a five-day hearing, delivered judgment on 30 March 2023.

[11] The court order arising from that judgment was in the following terms:

> "UPON this case being heard from 20 to 25th February 2023,
>
> AND UPON the Court delivering judgment on 30th March 2023.
>
> AND UPON the Plaintiff stating that due to the Second Defendant's bankruptcy the Plaintiff does not seek judgment against him.
>
> THE COURT HEREBY:
>
> (i) GIVES JUDGMENT in favour of the Plaintiff against the First Defendant in the sum of £477,622.91.
>
> (ii) DECLARES that Mr Gary Best and Mr Gerard Kelly ('the Receivers') have been validly appointed by the Plaintiff as receivers over the property at 48/49 The Square, Crossmaglen, being the property in folio 16777 County Armagh ('the Property').
>
> (iii) ORDERS that the Defendants do provide possession of the Property to the Plaintiff, the enforcement of this order to be stayed for 6 weeks from the date hereof.
>
> (iv) DISMISSES the Defendants' Counterclaim.
>
> (v) DISCHARGES the agreement dated 9 February 2015 between the Plaintiff, the Defendants and the Receivers.

(vi) MAKES no order for costs on the interim injunction proceedings.

(vii) ORDERS that the Defendants do pay the Plaintiff's costs in the Plaintiff's claim and the Plaintiff's cost in the Defendants' Counterclaim, such costs to be taxed in default of agreement."

[12] On 10 July 2024, the plaintiff/respondent in these proceedings, Ker Property Management Ltd, entered into a contract with the Bank of Ireland UK Plc as mortgagees in possession for the purchase of the property in the sum of £205,000. The purchase completed on 19 July 2024.

[13] Since that time, the plaintiff/respondent has been frustrated and unable to secure possession of the property. In an affidavit supporting the Order 113 application before Mr Justice Huddleston, Mr Raymond Kelly on behalf of the plaintiff/respondent, has set out a series of actions on behalf of the defendants/appellants challenging its entitlement to the property and frustrating its attempts to secure possession. These included averments that notices were placed on the door, locks were changed, locksmiths and representatives of the plaintiff/respondent were challenged, surveillance cameras were placed around the property, and that the front door of the property was boarded up.

[14] It is not necessary to resolve any factual dispute on these issues because it is clear through these proceedings that the defendants/appellants assert they are the owners of the property and challenge the plaintiff's/respondent's entitlement to the property.

[15] Arising from the matters set out above, the plaintiff/respondent issued an originating summons for possession of the property under Order 113 of the Rules of the Court of Judicature (Northern Ireland). Order 113 rule 1-(1) provides:

> "When a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over the termination of the tenancy) who entered into or remained in occupation, without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order..."

[16] As indicated, the summons was supported by an affidavit sworn by Mr Raymond Kelly on behalf of the plaintiff/respondent, setting out much of the background referred to above.

[17] The matter was heard by Mr Justice Huddleston on 2 December 2024. The second defendant/appellant, Michelle McKeever, appeared at the hearing and vigorously contested the application. As indicated, Mr Justice Huddleston made the order which is now under appeal. The matter was reviewed by Huddleston J on 10 December 2024 when he confirmed his order.

Grounds of appeal

[18] The grounds of appeal are diffuse and wide ranging.

[19] Many of the grounds relate to the alleged misconduct of Mr Justice Huddleston in the course of the hearing. It is argued that he failed to give adequate reasons, that he failed to provide written reasons, that he failed to consider the arguments made on behalf of the defendants/appellants and that, overall, he denied them a fair hearing.

[20] There is no merit in these grounds. The court has reviewed the record of the hearing. It is clear that Mr Justice Huddleston considered the relevant arguments (which were repeated before us) and explained the reasons for his decision, which we will explore further below.

[21] A fundamental tenet of the defendants' appeal relates to the assertion that John McKeever was in sole possession of the property, and that the fact that he was registered accordingly provides absolute title of ownership to him.

[22] It is asserted, in essence, that the plaintiff/respondent has never been in lawful possession of the property.

[23] In short, the gist of the appellant's appeal is, and must be, that the order of Mr Justice Simpson was invalid in some way. In this appeal, the appellants are, in effect, seeking to relitigate the issues that were comprehensively considered and dealt with by Mr Justice Simpson.

[24] It must be remembered that the court is dealing with an application under Order 113 of the Rules. The law in relation to such applications is clear.

[25] To establish the entitlement to an order under Order 113, the court must be satisfied that the respondent in this case is "in lawful possession of the property." Mr McKeever strongly makes the point that he remains the registered owner as far as the Land Registry is concerned and that matter should be conclusive. In that respect, it is noted that the plaintiff/respondent lodged the transfer from the bank to it on 14 August 2024 in the Land Registry and completion of registration is awaited.

[26] Put simply, the plaintiff/respondent enjoys possession by reason of the right of sale arising from sections 19, 20 and 24 of the Conveyancing Act 1881 along with

the charge deed which provides the power of sale. The bank was entitled to proceed with the sale on foot of the charge.

[27] The judgment of Mr Justice Simpson confirms that both the mortgage and charge are valid. It confirms that the appointment of the receivers is valid and that the defendants/appellants are not entitled to possession of the property. That being so, the bank was entitled to proceed with the sale. It is noted that Mr Justice Simpson refers specifically within the judgment to the relevant provisions of the Conveyancing Act 1881, see paras [78] and [84] of his judgment.

[28] The court refers to the text of the Law of Mortgages in Northern Ireland by Charles O'Neill, which provides at paragraph 12.35:

> "**Method of sale of the mortgaged property**
>
> 12.35 If a lender sells on foot of a legal mortgage it has discretion as to the method of sale of the mortgaged property. It does not need to obtain a court order for sale. Further, it has been observed that section 19(1) of the Conveyancing Act states that the lender may sell by private treaty or by auction."

[29] In order to defeat the application, the defendants/appellants must establish that they have an arguable case that they are entitled to possession of the property. This issue has been heard and determined by Mr Justice Simpson, as reflected in the order referred to above. After a lengthy hearing and 10 years of litigation, the High Court has ordered that the defendants/appellants are required to deliver up possession of the property to the bank. That order stands. Put simply, the appellants do not have a right of possession in respect of this property.

[30] As for the plaintiff/respondent, Ker Property Management, it derives its title to the property from the bank, which had the benefit of possession on foot of the order of Mr Justice Simpson.

[31] The main substantive issue raised by the defendants/appellants is to the effect that John McKeever was the lawful owner and that no valid charge has been made against him. This is simply not borne out by the history and the court order of Mr Justice Simpson.

[32] The bank's original proceedings were based on a charge deed between the bank and both Michelle and John McKeever.

[33] Clause 6 of that document sets out the powers in the event of default. It provides:

> "The bank shall have the power of sale and all other powers conferred by the Conveyancing and Law of Property Act 1881 (hereinafter called "the Act") upon Mortgagees with and subject to the following modifications –
>
> (a) The monies hereby secured shall be deemed to have become due within the meaning of the Act and Section 4 of the Conveyancing and Law of Property Act 1991 and for all the purposes thereof when a demand for payment of any part thereof shall have been made in the manner aforesaid; and
>
> (b) The said power of sale shall be exercisable without the restrictions on its exercise imposed by Section 20 of the Act;
>
> (c) The power to appoint a receiver of rents and profits of the Charged Premises, shall be exercisable without the restrictions on its exercise imposed by Section 24 of the Act."

[34] Clause 10 provides for the power of appointment of receivers.

[35] As is clearly set out in Mr Justice Simpson's judgment, there was default in respect of the borrowing. As a result, the bank called in the debt and appointed receivers. The Deed of Appointment clearly refers in recital (1) to the charge of 15 June 2007, made between "(1) Michelle McKeever and John McKeever, both of 4 McCormack Place, Crossmaglen, Newry, Co Down, BT35 9HD ("the charge") and (2) The Governor and Company of the Bank of Ireland. The property described in the Schedule to this Deed ("the party") was charged in favour of the Governor and Company of the Bank of Ireland to secure payment of the principal monies, liability interest and other money covenanted to be paid or discharged by the Charger under the Charge or otherwise secured by it."

[36] Importantly, the appointment of receivers provides:

> "The lender, in pursuance of the powers given to it by the Charge and all other powers (if any) conferred upon it by statute or otherwise, appoints the Receivers to be the receivers and managers of the Property and all the income of the Property (if any) upon the terms and with all the powers and authorities conferred by the Conveyancing and Law of Property Act 1881 and by the Charge and otherwise so that the receivers may exercise any such power."

[37] As is clear from the history, the appellants challenged the appointment of the receivers which resulted in the proceedings brought by the bank in May 2013 resulting in the judgment of Mr Justice Simpson which has founded the basis of the subsequent Order 113 summons.

Miscellaneous issues

[38] As indicated earlier, the grounds of appeal were diffuse and wide ranging. A feature of the grounds and the appellants conduct in relation to these proceedings has been to raise irrelevant issues, allege misconduct against anyone who disagrees with them and seek to relitigate matters that have been determined. For that reason, it is necessary to dilate on some of those issues which require comment by the court.

Recusal application

[39] At the commencement of the hearing the defendants/appellants made an application for Lord Justice Treacy to recuse himself from the hearing.

[40] The basis of the recusal application related to assertions by the second defendant/appellant that Lord Justice Treacy was openly hostile to her in the course of various case management hearings.

[41] It was asserted that she was spoken to in a hostile or abrupt tone, that she was interrupted repeatedly while raising concerns and was directed to sit on occasions when she suffered from a medical condition that made it difficult to do so.

[42] She also complained that in a related case in March 2024 Lord Justice Treacy failed to "deal with a properly filed notice of motion listed for hearing." She asserts that she discontinued that appeal partly due to the intimidating tone of the Lord Justice.

[43] At the commencement of the hearing this application was dismissed as being without merit. The appellant's dissatisfaction with case management decisions and with her exchanges with the court are simply insufficient to establish the basis for a recusal application.

The redacted order

[44] In the course of the appeal, the defendants/appellants made much of the fact that the summons was supported by a redacted version of the order of Mr Justice Simpson. Ms McKeever abused the privilege of legal proceedings to make assertions of dishonesty and impropriety against the solicitor, Mr Gerard Trainor, who acts for the plaintiff/respondent in these proceedings. It is important that the court deals with this issue.

[45] The redacted version of the order was in the following terms:

> "UPON this case being heard from 20 to 25th February 2023,
>
> AND UPON the Court delivering judgment on 30th March 2023.
>
> [Redacted Text]
>
> THE COURT HEREBY:
>
> (i) [Redacted Text]
>
> (ii) DECLARES that Mr Gary Best and Mr Gerard Kelly ('the Receivers') have been validly appointed by the Plaintiff as receivers over the property at 48/49 The Square, Crossmaglen, being the property in folio 16777 County Armagh ('the Property').
>
> (iii) ORDERS that the Defendants do provide possession of the Property to the Plaintiff, the enforcement of this order to be stayed for 6 weeks from the date hereof.
>
> (iv) [Redacted Text]
>
> (v) [Redacted Text]
>
> (vi) [Redacted Text]
>
> (vii) [Redacted Text]"

[46] As was explained at the hearing in an affidavit filed by Mr Trainor, the reason he exhibited a redacted order with the Order 113 proceedings was quite simply because that was what he was provided with by DWF Solicitors who acted on behalf of the bank in the original proceedings. The significance of the redacted order is that it had redacted those parts of the order which did not relate to the possession of the Property. Obviously, DWF took the view that the redacted aspects of the order were not relevant to the repossession proceedings.

[47] It is clear from the pleadings in the original action and from subsequent correspondence by DWF that the bank sought possession against both John McKeever and Michelle McKeever but sought damages only against Michelle McKeever because of John McKeever's bankruptcy. It is correct that the

court received the relevant details in relation to possession. Any suggestion of impropriety or dishonesty on behalf of Mr Trainor is totally unfounded.

[48] The court accepts Mr Trainor's affidavit to the effect that he did not amend the order but simply relied on what was provided to him which was sufficient to deal with the issue of possession of the property.

Representation before Mr Justice Simpson

[49] A major issue raised by the defendants/appellants in this appeal was that John McKeever was not in fact represented at the substantive hearing before Mr Justice Simpson.

[50] This is contrary to the express terms of Mr Justice Simpson's judgment where he says at para [10]:

> "…The first defendant Mrs McKeever, appeared and conducted the trial in person, with some assistance from her friend. The second defendant, Mr McKeever did not physically attend the hearing (whether or not he linked in by Sightlink I do not know) but the first defendant indicated that she appeared for both defendants."

[51] What is clear is that Mr Justice Simpson expressly dealt with the points made on behalf of Mr McKeever at that hearing.

[52] It is also clear that he approached the case on the basis that he was dealing with both defendants. Throughout the judgment he refers to the "defendants." Further he expressly deals with the defence and counterclaim which was served by both defendants.

[53] There is reference throughout his judgment to the circumstances relating to Mr McKeever and his role in relation to the mortgage application which was at the heart of the claim.

[54] It seems to the court therefore that whether Mrs McKeever was acting on behalf of Mr McKeever is ultimately irrelevant. There is no suggestion that Mr McKeever was unaware of the hearing or the judgment. Mr Justice Simpson made an order against both defendants/appellants in respect of the relevant property. The judgment stands and is clear.

Subsequent submissions

[55] Since the hearing of the appeal the court office has received a series of communications from the second named defendant/appellant repeating points that had been made previously and manufacturing additional grievances.

[56] These culminated in a submission dated 29 August 2025 in which the applicant raised a series of issues.

[57] I propose to deal with each of these matters briefly.

[58] The first related to an ex parte communication between the court and the respondent's solicitor.

[59] It is clear from the relevant correspondence that by the direction of the court the court office wrote to the plaintiff/respondent's solicitors on 29 May 2025 in the following terms:

> "Dear Sir/Madam,
>
> I refer to the above appeal.
>
> I would be grateful if you could provide an electronic copy of the respondent's position paper in MS Word format please?
>
> Furthermore, the court requests the respondent to confirm they are relying on their position paper as their skeleton argument for the appeal."

[60] On 29 May 2025 the respondent's solicitor replied in the following terms:

> "We enclose the respondent's position paper and confirm that the respondent relies upon this position paper as a skeleton argument for the appeal.
>
> The defendant also relies on the judgment of Mr Justice Simpson on 30 March 2023 which is attached.
>
> Please acknowledge safe receipt of this email."

[61] A copy of this correspondence shall be sent to the appellants.

[62] To characterise this as advice by Lord Justice Treacy or that it had resulted in a serious procedural irregularity or that it materially prejudiced the appellants' ability to present their case fully is plainly misconceived.

[63] The submissions go on to repeat the complaint about the failure to accede to the appellants' application for a recusal. The appellants also complain about non-disclosure of what they describe as "critical transcripts" of the lower court hearing and judgment. The court does not consider that such transcripts are critical. As is apparent from the judgment, the issue that arises in the appeal is

straightforward. It does not require a forensic analysis of the decision of Mr Justice Huddleston. This court has, in effect, dealt with this as a rehearing. There is simply no prejudice arising to the appellants.

Conclusion

[64] For the reasons set out, there is simply no merit in this appeal. The appeal is, therefore, dismissed.