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| **Neutral Citation No: [2026] NICh 4**<br><br>*Judgment: approved by the court for handing down (subject to editorial corrections)** | *Ref:* **SCO12953**<br><br>*ICOS No:* **25/088403**<br><br>*Delivered:* **21/01/2026** |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**CHANCERY DIVISION**

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**Between:**

**DANIEL McATEER and AINE McATEER**

**Plaintiffs (Applicants)**

**-and-**

**THE PROGRESSIVE BUILDING SOCIETY**

**Defendant (Respondent)**

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**The first plaintiff appeared in person**
**Keith Gibson (instructed by Peden & Reid, Solicitors) for the defendant**

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**SCOFFIELD J**

*Introduction*

[1] This is an application by Daniel McAteer and Aine McAteer ("the plaintiffs") for an interlocutory injunction against the Progressive Building Society ("the Progressive").

[2] The dispute relates to a property at 81 Gleneagles, Londonderry ("the property"). The defendant is a mortgagee seeking to exercise its power of sale in respect of the property. (Strictly speaking, as the land is registered, the Progressive has a charge. However, for convenience, the terminology of mortgage, mortgagor and mortgagee is used throughout.) The plaintiffs claim an equitable interest in the property on foot of an agreement or agreements entered into by them with the former owner of the property and the mortgagor, Mr Logue, although any such agreement was at a time when he was subject to an individual voluntary arrangement (IVA). By this application the plaintiffs seek to restrain the Progressive from selling the property.

[3] Mr McAteer appeared in person on behalf of himself (and, I assume, his wife, the second plaintiff); and Mr Gibson of counsel appeared for the defendant. I am grateful to each of them for their oral submissions and for their supplementary closing submissions provided in writing after the hearing (albeit these were considerably longer in each case than the court had anticipated).

***Factual background***

[4] There is a complicated factual and procedural history to this dispute, which is summarized below. This account is by no means intended to be exhaustive. It is drawn in some measure from materials – often position papers rather than sworn evidence – provided by the plaintiffs. I am conscious, therefore, that some elements set out in the summary may themselves be contentious; and also, that I have not, for present purposes, been provided with the totality of communications between, or evidence from, all of the main players.

[5] The property in question was built by Mr Logue and his wife, although only Mr Logue was registered as the owner. The main contractor was John Porter & Sons Ltd ("Porter"). It seems that, at the time of construction, a dispute broke out between the Logues and Porter. The former complained of serious overruns and defects; and the latter complained that they were owed sums for completed work. The dispute was resolved by way of a settlement agreement reached in the context of litigation in which Porter was suing Mr Logue. By virtue of the settlement, the Logues were to pay Porter £60,000 and Porter was to provide (what the applicants refer to as) "completion paperwork" in order to 'sign off' the works to the house.

[6] A copy of the settlement agreement has been provided. What it required Porter to provide was "all necessary information required to facilitate the issuance of a Building Control Completion Certificate" in respect of the property, "such information to include the items specified in the Schedule" to the agreement. The Schedule listed the following matters: (i) Gas Safe certification for the gas heating; (ii) the commissioning certificate for heating systems and controls; (iii) the commissioning certificate for the ventilation system; (iv) a manufacturer's certification that glazing to bannisters and stairs complied with certain standards; (v) gas fire certification; and (vi) 'as built' drawings in relation to SAP, EPC and air tightness tests in relation to insulation, junctions, u-values for windows and doors, along with confirmation from the contractor that Government requirements had been complied with.

[7] The plaintiffs say that "it remains unclear, 6 years later, what if any paperwork was provided by the contractor" pursuant to the settlement. For my part, I am not sure how or why this remains unclear. Given the plaintiffs' involvement with the Logues (on which they strongly rely), one would have thought it would be a simple enough matter for the Logues to inform the plaintiffs what paperwork Porter had, or had not, provided. The plaintiffs' case proceeds on the basis that at least some or all of the required paperwork has not been provided.

[8] In any event, Porter registered a caution against the property in August 2015 which, I am told, remains in place. The Progressive (the defendant in these proceedings) had previously registered a charge on the property on 7 October 2014, reflecting the mortgage entered into by Mr Logue with it by deed.

[9] As a result of financial difficulties, the Logues approached an insolvency practitioner (Mr Duffy of the firm of McCambridge Duffy). At this time, Mr Logue had been presented with a statutory demand which he was unable to meet. The family was generally financially stretched. As a result of Mr Duffy's advice, Mr Logue entered an IVA, with Mr Duffy as the supervisor. The plaintiffs are highly critical of the terms of the IVA and the advice apparently given by Mr Duffy and the arrangements overseen by him. It is said that complaints have been made to the relevant regulator about this, which are yet to be determined. I am unaware of the full detail of these complaints and whether or not they will ultimately be found to have merit.

[10] Nonetheless, the plaintiffs' case is that, in June 2020, the Logues entered into an agreement with them ("the June 2020 agreement") which, inter alia, created a number of options in relation to the property. The agreement is said to have enabled the Logues to raise the money they needed to pay off all of their creditors in full and to create 'breathing space' so that the "the paperwork for the house could be put in order" and a fire sale in respect of it avoided. The plaintiffs' grounding affidavit makes clear that this agreement was entered into *after* Mr Logue had entered into the IVA which was also designed to release the equity in the property so that his creditors could be paid off. It further makes clear that Mr Logue's mortgage on the property with Progressive predated any agreement between him and the plaintiffs, and that this was known by the plaintiffs at the time.

[11] The plaintiffs aver that they made a variety of payments on foot of this agreement with the Logues. They also refer to the agreement being "amended by consent in July 2021." The payments the plaintiffs made are said to have been just over £108,000. In addition, the plaintiffs say that they paid off creditors of Mr Logue (Wallace Contracts and Clarendon Consulting) to the tune of £24,500 in line with the June 2020 agreement.

[12] The IVA supervisor, Mr Duffy, called a meeting of Mr Logue's creditors – despite (the plaintiffs say) being on notice of the June 2020 agreement between them and the Logues and being aware of complaints about his conduct – to propose that Mr Logue be made bankrupt as a result of his failure to comply with the IVA and/or failure to sell the property. Mr Logue's then solicitors (Downey Property Solicitors) wrote to Mr Duffy on 8 September 2021 stating that the Logues had entered into a phased sale agreement in respect of the property but that completion of the sale could not take place because there was not "good and marketable title" to the property (pending the provision of the outstanding paperwork from Porter).

[13] In due course, Mr Duffy petitioned the court for Mr Logue to be made bankrupt and requested that he be appointed the trustee in bankruptcy. At this point, Mr McAteer wrote to the court, on 28 January 2022. He describes his intervention as being in the capacity of "a potential intervener/Amicus Curiae." He wanted to emphasise the point that, under his agreement with Mr Logue, all of Mr Logue's creditors would be paid as a result of moneys which he and his wife were to provide as part of the proposed sale of the house to them.

[14] As Mr McAteer notes, his correspondence of 28 January 2022 had no effect. Despite the McAteers' objections, Mr Logue was duly made bankrupt on 16 March 2022. Mr Pattullo, an insolvency practitioner (based in Scotland), was later appointed as trustee in bankruptcy ("the trustee") by the Department.

[15] On the plaintiffs' case, at the time of the bankruptcy Mr Logue's liabilities were around £367,000. They aver that they paid contractors and a consulting firm (the £24,500 referred to above); that they (the plaintiffs) were owed around £103,000; and that the other liabilities included Porter (£110,000), Babingtons Solicitors (£33,000) and a range of other creditors. (I have used round figures for all of these sums; they are not accurate to the pound or penny). The plaintiffs say that many of the sums were disputed by Mr Logue. The above sum for total liabilities does not include a further figure of around £230,000 which was owed by the Logues to the Progressive in or around June 2020.

[16] The nub of the plaintiffs' case is that, at or about that time, the property could have been sold for around £750,000, which would have been enough to discharge the Logues' indebtedness, even including the disputed amounts. They contend that it should have been sold to them on foot of their agreement with the Logues, albeit that was entered into during the course of the IVA.

[17] The plaintiffs repeatedly emphasise that, at the time of the bankruptcy, they were Mr Logue's largest unsecured creditor. They say they were owed £103,000. However, this appears to ignore the fact that the plaintiffs' position paper indicates that there was a liability to Porter of some £110,000. The basis for this being left out of account seems to be that this debt was disputed by Mr Logue because the "final paperwork" in relation to the property was never provided. In addition, in different places the plaintiffs claim to have been owed more by Mr Logue, giving a total debt to them of around £157,000. This higher figure takes into account work done by Mr McAteer to assist Mr Logue challenging the IVA (albeit elsewhere it appears to be suggested that this claim is not being pursued by the plaintiffs at this time); and noting that the plaintiffs had also been "assigned the debts" of the other two creditors whom they had paid.

[18] In any event, the plaintiffs remained keen to purchase the property and considered, on the basis above, that, if a sale to them was allowed to proceed, it would discharge all of Mr Logue's liabilities. They therefore engaged with an agent for the trustee in bankruptcy, Mr O'Hara, in relation to their proposed purchase of

the property; and also with Mr Harvey of Peden & Reid, Solicitors, the solicitors for the Progressive. The plaintiffs wanted to purchase the property with a view to the purchase moneys being used to pay off Mr Logue's creditors, including the mortgage debt with the Progressive. A variety of discussions with both the trustee and the Progressive seem to have taken place in late 2022 and early 2023. These discussions ultimately proved unfruitful, partly (it seems) because the trustee did not accept that Mr Logue owed the plaintiffs the sum which they said was due to them. There were also discussions at the time about the plaintiffs effectively buying the mortgage debt from the Progressive; but that too did not progress.

[19] As a result, Mr McAteer engaged solicitors (McIldowies) and took legal advice as to how to proceed. This resulted in proceedings being issued against the trustee seeking, inter alia, specific performance of the plaintiffs' agreements with Mr Logue. Those proceedings ("the first set of 2023 proceedings") bear the ICOS reference 23/48431.

[20] Since Mr McAteer was unhappy that the trustee did not appear interested in selling the property to him on the basis he proposed, he also took steps to seek to have the trustee removed. In August 2023, he wrote to Mr O'Hara inviting him to call a meeting of the creditors to consider a proposal to have Mr Pattullo replaced as trustee. When Mr O'Hara did not reply, Mr McAteer took this up with the Insolvency Service. He complains that neither took any action. As a result, McIldowies, on the plaintiffs' behalf, lodged an application on 9 November 2023 ("the creditors meeting application") inviting the court to make a direction that a meeting of the creditors take place under Article 271(3) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order"). That application has the ICOS reference of 23/96110.

[21] The trustee also made an application to the Bankruptcy Master the following day, 10 November 2023. His application was for directions and was made in the course of the earlier bankruptcy proceedings (bearing ICOS reference 21/078161). The plaintiffs complain that the Master decided to proceed with and determine the trustee's application before dealing with their application to require a creditors' meeting to be called. At an early review hearing in the present proceedings, the trustee's counsel told me that the Master has stayed the plaintiffs' application and determined that the trustee's application should proceed first. (Some further detail in relation to this has been provided in a more recent position paper submitted by Mr McAteer in the 23/96110 proceedings. By Order of 8 May 2024, the Master pursuant to Article 334(1) of the 1989 Order stayed the plaintiffs' application in relation to the calling of a creditors' meeting pending the outcome of the directions application filed by the trustee. That Order of the Master does not appear to have been appealed. This was at a time when the plaintiffs were legally represented before the Master.)

[22] I have not seen a copy of the trustee's application for directions, although correspondence from Mr McAteer in relation to the present application notes that it

asked the court to determine whether or not the trustee was required to schedule a meeting, with further other issues identified. In a position paper, he has referred to it as the trustee's application seeking "an Order of the Court blocking our statutory right to call the meeting." In his most recent position paper, Mr McAteer has provided an email from his then solicitor indicating that the trustee's application "also encompassed the relief you [Mr McAteer] were seeking." There was therefore plainly an overlap between the two applications; and the Master has decided as a matter of case management to deal with the trustee's application for directions first.

[23] In light of the plaintiffs' complaint that the trustee wrongly refused to recognise their debt as creditors, it seems likely to me that the trustee may have wanted that issue addressed first, since the plaintiffs' right to call a creditors' meeting (and their voting rights at that meeting) would be determined by virtue of their status (and value) as creditors. Indeed, the papers in the present application include some correspondence from the trustee's solicitors (TLT NI LLP) from late September 2023, in advance of the plaintiff's application to compel a creditors meeting. Amongst other things, it notes that the plaintiffs' proofs of debt have not been fully evidenced or proved, such that it was *not* accepted that they had the requisite 25% support to call a meeting. That correspondence also expressed concern that the plaintiffs proposed to pay off only those creditors of Mr Logue whom they (the plaintiffs) considered acceptable; and denied the validity of the agreement entered into by the plaintiffs and the Logues, or that it was binding on the bankrupt's estate. In the alternative, the correspondence noted that the agreement had been disclaimed by the trustee, which disclaimer had not been challenged at the relevant time.

[24] In a vivid phrase, the plaintiffs complain that their simple application was "buried under a blizzard of paper" lodged by the trustee with his application the day after they had lodged theirs. They further say that, almost two years later, neither application has been dealt with in substance. The reasons why the plaintiffs consider that the trustee should be removed include the following (on their case): that he has failed to vouch or approve certain amounts due to creditors, including to them; that he has failed to properly investigate the conduct of Mr Duffy in relation to the IVA; that he has failed to resolve the outstanding issue with the paperwork required to be provided by Porter "so that good and marketable title could be provided" in respect of the property; and his failure to implement the agreement reached between the plaintiffs and the Logues. The plaintiffs make a number of further criticisms of the trustee and say it is unfortunate that creditors have been denied their right to have a meeting to discuss his removal.

[25] I am unsighted as to much of the detail of the dispute between the plaintiffs and the trustee. However, from what little I have seen and heard in the course of the present application, it seems clear that the trustee does not accept that the plaintiffs have the requisite support of not less than one-quarter in value of the creditors to require the holding of a meeting for the purpose of replacing the trustee pursuant to Article 271(3)(c). That issue may well not be as straightforward as it seems or as

Mr McAteer presented it, having regard to the figures mentioned in paras [15] and [17] above. In addition, there may be some incongruity in the plaintiffs' case that, at one and the same time, their payments to Mr Logue represented part performance of their option agreement to purchase the property (and so represent purchase moneys) but also that they represent a debt which is due for repayment to the plaintiffs.

[26] In any event, the question of the plaintiffs' status and value as creditors will obviously require to be resolved if the plaintiffs' claims are challenged. It is regrettable, assuming this to be the case, that these issues have not yet been resolved. I do not have the information available in order to know whether there is any good reason for the delay or not, nor to assess where responsibility for any delay lies; nor do I need to for present purposes. The chronology provided by the plaintiffs, however, suggests that there have been various procedural disputes in relation to expert evidence and the papers to be considered by the Master which may explain at least some of the delay.

[27] At an earlier point, the Bankruptcy Master made an Order on 26 May 2023 directing that possession of the property be provided to the trustee in bankruptcy and giving the trustee liberty to sell it (although the Order was stayed until 17 July 2023).

[28] The position at the moment is that the trustee is not in a position to sell the property to discharge the bankruptcy debts. That arose in the following way. Concerned that the trustee may try to sell the property, the plaintiffs registered a caution against it in August 2022. The trustee then brought his own proceedings ("the second set of 2023 proceedings") seeking the removal of the caution or its removal unless the plaintiffs provided an undertaking in damages, such as would accompany the grant of an interim injunction, in accordance with the approach in *Bubble Inns Ltd v Beannchor Ltd* [2007] NICh 1. Those proceedings bear ICOS reference 2023/86783. In the context of those proceedings, there is an order from Huddleston J dated 11 June 2024 restraining the trustee from selling the property. The plaintiffs provided an undertaking in damages in relation to this interlocutory order. That is how matters sit between the plaintiffs and the trustee, pending determination of (presumably) *both* sets of 2023 proceedings between them.

[29] In the meantime, the Chancery Master had separately made an Order on 17 April 2023 directing Mr Logue, within three months, to deliver possession of his property to the Progressive in light of the default on his mortgage.

[30] The plaintiffs were and are perturbed by the fact that two possession orders had been made by different Masters in relation to the same property: the Chancery Master's Order of 17 April 2023 ordering the giving of possession to the Progressive; and the Bankruptcy Master's Order of 26 May 2023 ordering the giving of possession to the trustee. I return to this issue below.

[31] There are a number of references to Mr Logue having become "incapacitated" by April 2023 (ie by the time of the Chancery Master's Order granting possession to the Progressive), or indeed at some time earlier than that. In correspondence from Mr McAteer he has referred to Mr Logue claiming to have serious mental health issues, with some further details provided which it is not necessary to set out. In any event, it seems that, for some years, Mr Logue has not been engaging with these issues in the way in which one might otherwise expect.

[32] In or around October 2023, well before Huddleston J's Order in June 2024 restraining a sale by him, the trustee placed the property on the market for sale. This sale fell through for reasons which the plaintiffs say are unknown to them, although they have offered a number of speculative reasons. One of these is "the issues with title." On the other hand, the trustee might well suggest that the registration of the plaintiffs' caution in 2022 had a chilling effect on the prospect of sale. The plaintiffs apparently notified the trustee that they would not stand in the way of any sale at a higher price than what they had offered "subject only to the acknowledgment of our rights on foot of our agreements with the Logues" (whatever that may mean).

[33] In due course, however, the property then came back on the market in or around May 2025. Although it was marketed by the same selling agent, this time the Progressive was the vendor. The plaintiffs say they were told that the basis for the sale was that the highest offer received by 4.00 pm on 29 May 2025 would be accepted and the sale would be closed. The plaintiffs offered £726,000 and aver that this was the highest bid at closing. However, they say the agent then told them that the sales process was not closed and would continue for a further week at least. Their offer was later accepted and they instructed a firm of solicitors (Fahy & Co) to deal with the purchase. They say they were surprised to learn that the seller was the Progressive (which had instructed Peden & Reid), which indicated that it had taken possession of the property in February 2025. (Correspondence from the trustee also indicates that the Progressive took possession in or around February 2025 and began marketing the property around then).

[34] This proposed sale to the plaintiffs ultimately fell through also, on the plaintiffs' case because the vendor's solicitor failed to provide basic information to establish "clear and marketable title." When analysed, this is not a reference to the establishment of the vendor's legal right to sell the property (in the sense that "title" is usually understood in the conveyancing context) but, rather, simply a reference to paperwork or information in relation to the building works which the plaintiffs sought, including in particular paperwork said to still be outstanding from Porter and ultimately internal Building Control notes or records. (In his position paper of 16 October 2025, Mr McAteer links "the long outstanding matter regarding the Porter paperwork" with the issue of "clear title." In correspondence from Downey Property Solicitors to Mr Duffy of September 2021, there is also reference to there not yet being "a good and marketable title" due to the lack of certain paperwork, namely a Building Control approval of plans and completion certificate, an energy

performance certificate, an architect's certificate of practical completion and a gas safety certificate.)

[35] On the defendant's case, the sale fell through because the plaintiffs were unreasonably insisting on seeing documentation which it (as mortgagee in possession) did not possess, which it could not reasonably be expected to have or obtain, and/or which was simply unnecessary. It relies strongly upon the fact that a Building Control Completion Certificate was provided, which (it says) is all that is required in this regard under the Home Charter Regulations. It might also be observed that the paperwork to be provided by Porter to the Logues on foot of their settlement agreement was expressly in order to "facilitate the issuance of a Building Control Completion Certificate", which has now occurred. The plaintiffs' affidavit confirms that a Building Control Completion Certificate was issued on 17 December 2024. However, the plaintiffs do not appear to be satisfied with this since it only certifies completion "so far as the Council has been able to ascertain."

[36] The Progressive also relies upon the fact that it is frequently the case where a mortgagee sells a repossessed property that it is unable to respond to pre-contract enquiries or disclosure requests as a purchaser might ideally wish. That is because such a vendor is often selling the property without the cooperation of (or sometimes with active opposition from) the defaulting mortgagor who lived in the property and has access to the information or documents, but who has been evicted as a result of failure to pay their mortgage. That is one reason why repossession sales are often conducted by auction and/or with the property being said to be simply "sold as seen."

[37] Since the Progressive and the plaintiffs could not agree to proceed in light of the impasse which arose over this issue, the property was therefore placed back on the market. The Progressive's position is that a new buyer has been found. It wishes to proceed with a sale to that buyer and the plaintiffs wish to restrain the sale in the hope that, eventually, they may be able to obtain the property themselves. The plaintiffs' suggested next steps involve the trustee (standing in the shoes of Mr Logue) resolving the issue regarding the Porter paperwork before the plaintiffs complete their intended purchase. The defendant's position is essentially that that is simply not a matter for them.

***The initial agreement(s)***

[38] In his position paper of 16 October 2025, Mr McAteer says that he and his wife "entered into an agreement with Mr Logue and his wife whereby we would purchase their property on a phased basis." The agreement is described in different ways in a variety of places. However, it is mostly referred to as a "phased sale agreement" by the plaintiffs. In correspondence from their solicitors in July 2023 it is also described (more accurately, in my view) as "an option agreement." It was initially entered into on 30 June 2020 but, apparently, varied by mutual agreement in June 2021, with the new terms taking effect from 1 July 2021 ("the July 2021

agreement"). It is unclear whether the June 2020 agreement was in writing to any degree.

[39] The papers before me contain a copy of what I was told was the July 2021 agreement. It is undated and unsigned, although accompanied by a signed "Memorandum of Understanding" between the Logues and McAteers, again undated but which clearly post-dates the July 2021 agreement. The parties committed to "use their best endeavours to give legal effect" to the agreement.

[40] The July 2021 agreement provides (at paragraph 1) that "the period of time for the updated deal is four years commencing 1 July 2021." At paragraph 2 it provides that, "The option price for the property is to be fixed at £750,000 for the next four years." The agreement appears to contemplate that the property may be sold to someone *other than* the McAteers, since provision is made for circumstances where the property is sold within the four-year period at a different price from that agreed for the exercise of the McAteers' option, whether higher or lower. The agreement also makes provision for a variety of payments to be made which, in context, appear to be agreements for the McAteers to make payments (although this is not always spelt out). Those funds are to be refunded to them in certain circumstances and credited to them in other circumstances. The agreement also makes provision for rental payments if the McAteers move into some or all of the property without having purchased it, it being contemplated that the McAteers would occupy part of the property from 1 July 2021 (although this does not appear to have happened).

[41] As noted above, the plaintiffs indicate that substantial payments were made on foot of that agreement of £108,376.81, as well as payments to Mr Logue's creditors referred to at paras [11] and [15] above. On that basis, Mr McAteer says that he and his wife are owed around £133,000 by Mr Logue (in addition to professional fees for seeking to challenge the IVA, which it appears are not presently being pursued by Mr McAteer, and which do not immediately appear to be provided for in the agreement which refers only to Mr McAteer providing "assistance to the supervisor of the IVA and other advisors in relation to bringing the IVA to an end").

***The current proceedings***

[42] The present application was initially brought against both the trustee and the Progressive. At the first review, the trustee's counsel submitted that the application – ostensibly brought within the ambit of the first set of 2023 proceedings – was an abuse of process, since it was brought by the plaintiffs as litigants in person (with Mr McAteer making submissions) in circumstances where the plaintiffs were legally represented in the proceedings. The plaintiffs' solicitors and counsel in those proceedings have since come off record. There were a variety of other complaints from the trustee about the process adopted (for instance, that the grounding affidavit did not set out the full background and that there had been no pre-action correspondence in advance of the application). The application bore the ICOS reference 23/048431. It was headed as an action between the plaintiffs and trustee.

However, it also bore the following text in the title: "In relation to the matter of a proposed action against the Progressive Building Society (Proposed Defendant/Proposed Respondent)."

[43] The trustee asserted that the plaintiffs' solicitors in the proposed purchase, Fahy & Co, would have received a memorandum of sale dated 10 June 2025 which clearly stated that the Progressive was the vendor of the property. This memorandum of sale is, in fact, exhibited to Mr McAteer's grounding affidavit. On this basis the trustee said it was clear – and it seems highly likely – that the plaintiffs knew, or at least should have known, from mid-June that it was the Progressive selling the property and not the trustee. On that basis, the trustee's case was that the present application to restrain the sale was nothing to do with him. He was not selling the property.

[44] At that stage, Mr Gibson's main objection for the Progressive was that the plaintiffs could not seek a 'flying' injunction, that is, an injunction not founded on a pleaded cause of action against his client. That was a complaint that there had been no writ issued against the Progressive, nor any other originating process. The Progressive was not, and is not, a party to either set of 2023 proceedings. In those circumstances, its counsel indicated that the Progressive had no idea what cause of action would or could be relied upon against it, particularly in circumstances where it had no contractual relationship with the plaintiffs whatever.

[45] It is possible, in some cases, for an injunction to issue before the commencement of proceedings, *viz* without a writ having been issued: see section 91(1) of the Judicature (Northern Ireland) Act 1978. However, this is generally permitted only in highly urgent circumstances and only on foot of an undertaking from the moving party to issue a writ in the proceedings expeditiously thereafter. At the hearing on 22 September 2025, Mr McAteer indicated that he accepted that he would have to issue a new writ if the Progressive had standing and indicated he would give an undertaking to issue a writ.

[46] A draft writ was provided on 23 October 2025, which was then issued the following day. Aside from a claim for costs, interest and any other relief the court deems fit, the endorsement particularizes plaintiffs' claim as follows:

> "1. Damages, and such other relief as the Court deems appropriate, in respect of all loss and damage arising out of the negligence, breach of duty, breach of statutory duty, conspiracy and unlawful interference with the Plaintiffs' economic interests by the Defendants;
>
> 2. An Order for injunction restraining the Defendant from selling the property at 81 Gleneagles, Derry;

3. An Order pursuant to Section 5 of the Land and Conveyancing Act 1881 that the Defendant declare how much is owed by Mr Logue and that the Plaintiffs pay into Court a sufficient sum as decided by the Court;

4. Damages for loss, damage and expense sustained by the Plaintiffs caused by reason of the Defendant's intermeddling and interference of the sale of the property and disregard for previous Court Orders and rulings which bind the parties;

5. Any other remedy that this Honourable Court may deem appropriate, in the context of other related litigation, including an Order pursuant to Order 15 Rule 6(2)(b)(i) that the Defendant be joined as a Defendant or a third party in the matter of Daniel McAteer and Aine McAteer v Ken Pattullo 2023 No. 48431 or alternatively in the matter of Ken Pattullo v Daniel McAteer and Aine McAteer 2023 No. 86783;"

[47] In advance of the substantive hearing dealing with the plaintiffs' application for the interlocutory injunction, the trustee in bankruptcy dropped out of the proceedings by agreement. The procedural position was regularized to some degree by the issue of the new writ, although I understand that this has not yet been served by the plaintiffs. In any event, the application proceeded only against the Progressive, as defendant in the new action with the ICOS reference 25/88403, and on foot of the pleaded case contained in the endorsement on the writ quoted above. I accept the thrust of the defendant's point that an application for injunctive relief must be founded upon some cause of action (see the well-known dictum of Lord Diplock in *Siskina (Cargo Owners) v Distos Compania Naviera SA* [1979] AC 210, at 256C-E, albeit that this principle has been mollified to some degree in certain contexts in subsequent case-law). However, the plaintiffs have remedied the position by issuing a writ which sets out their heads of claim. The debate therefore shifts to the question, inter alia, of whether any of the heads of claim raise a serious issue to be tried.

***Summary of the parties' positions***

[48] The plaintiffs assert that, on foot of their agreement with the Logues, they have a right to buy the property; that this right is effective against the trustee in bankruptcy; and that the defendant has wrongfully colluded with the trustee to circumvent the Order of Huddleston J preventing the trustee from selling the property until their dispute with him is resolved. They contend that they have raised serious issues to be tried as against the defendant; that damages are not an

adequate remedy given their desire, and earlier agreement with the Logues, to purchase this property in particular (which ideally meets the needs of their daughter); and that their position should be protected by restraining the sale of the property by the Progressive pending the resolution of the other proceedings with and/or regarding the trustee.

[49] The defendant asserts that the plaintiffs have not identified any serious issue to be tried as between them on the one hand and it on the other. All of the plaintiffs' proposed causes of action, it submits, are unsustainable. Its interest takes priority over any right which could have been granted by Mr Logue (whose ownership is subject to the Progressive's mortgage) and it is free, in exercise of its power to sale, to now sell the property, which it is seeking to do in order to protect its legitimate commercial interests. If there is a serious issue to be tried, it submits that damages are an adequate remedy for the plaintiffs and that, in any event, both the balance of convenience and presumption in favour of the status quo favour the refusal of an interlocutory injunction.

***Relevant legal principles***

[50] There is no real controversy about the relevant legal principles to be applied when the court is considering an application for an interlocutory injunction. I recently considered these in the case of *McAshea v Murnaghan & Fee Solicitors and Others* [2025] NICh 7, at paras [13]-[17], with reference to earlier expositions on the part of Deeny J in *McLaughlin & Harvey Ltd v Department of Finance and Personnel* [2008] NIQB 25 and of McBride J in *Drennan v Walsh* [2018] NICh 3. The overall test is whether the grant of an interlocutory injunction is "just and convenient" but, in addressing this question the court will consider whether the plaintiff has shown that there is a serious issue to be tried; whether damages would be an adequate remedy for each side; the balance of convenience; and the prudence of preserving the status quo where other factors are evenly balanced. The relative strength of each party's case may be taken into account as well as any other relevant special factors in the individual case.

[51] Before setting out my brief analysis of each of these factors, it is convenient to discuss a number of the legal issues and statutory provisions raised and relied upon by each side in the course of their submissions.

***The position of the defendant***

[52] The defendant submits that an option to purchase is a contract for the sale of land and must satisfy the requirements of the Statute of Frauds as to a note or memorandum in writing, signed by the party charged with the agreement or by their authorized agent. It seems that the trustee in bankruptcy has taken issue with the validity of the plaintiffs' option, whether it has been validly exercised, and whether it in any way binds him (see para [23] above). In the first instance, this is likely because of the absence of a signed memorandum of sale. The absence of

signed, written evidence of the agreement upon which the plaintiffs rely has driven them to rely on the doctrine of part performance, under which a decree of specific performance may nonetheless be granted provided there is sufficient part performance of the agreement (see, for example, *Steadman v Steadman* [1974] 3 WLR 56, at 83). However, the trustee also contends, as I understand it, that, having pledged the property to the IVA, with a specific term that he was not to sell any interest he may have in any asset subject to the arrangement without the supervisor's written consent, it was not open to Mr Logue to make an agreement for its sale to a third party. That last point appears to me, at least at first blush, to be a powerful one.

[53] However, the defendant asserts that all of these potential debates are moot as regards its position since, in any event, its interest in the property as mortgagee predates and is wholly unconnected to any possible interest arising under an agreement between the McAteers and the Logues.

[54] The mortgage which the Logues entered into with the Progressive included, at condition 5.2, an agreement that they would not do any of a number of things unless they had received the Progressive's written permission. These included selling or letting part of the property; granting someone a licence to occupy the property or any part of it; and transferring or mortgaging their interest in the property. Any purported transfer to the McAteers without the Progressive's consent was therefore also in breach of the mortgage conditions. Those conditions further provided for the total debt due to the Progressive becoming repayable in certain circumstances, including fairly standard provisions in relation to non-repayment but also if the mortgagor entered into a voluntary arrangement (see condition 7). Where the full debt became payable, the mortgagee's rights were referred to in condition 8, including the right to require the Logues to leave the property; for the Progressive to sell the property; and to exercise the rights given to it under the 1881 Act. (There are other provisions of the mortgage conditions which may be relevant upon the full trial of the action.)

[55] In the present case, the defendant obtained an order for possession against Mr Logue. (I return to the issue of the subsequent order for possession against Mr Logue which was also granted to the trustee in bankruptcy.) Mr Logue's position was protected by the provisions of the Administration of Justice Acts 1970 and 1973, insofar as he could have put forward a payment proposal for payment of the arrears in instalments (or the entire debt to the Progressive) within a reasonable time. That did not occur. Although possession is not strictly required in order for the defendant to exercise its power of sale, plainly, as a matter of practicality, it is preferable for a mortgagee to sell with vacant possession.

[56] By virtue of para 5 of Schedule 7 to the Land Registration Act (Northern Ireland) 1970 ("the 1970 Act"), the defendant has a power of sale under section 19 of the Conveyancing and Law of Property Act 1881 ("the 1881 Act"). This is provided for in broad terms in section 19(1)(i), as follows:

> "A power, when the mortgage money has become due, to sell, or to concur with any other person in selling the mortgaged property or any part thereof, either subject to prior charges or not, and either together in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) things fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby."

[57] Witchell (*Residential Property Law in Northern Ireland* (2000, SLS), at section 26.15) notes that the advantage for the mortgagee in selling the property under this statutory power of sale is that "he can exercise his power without applying to the court for any order and has a wide discretion as to the means of selling it." The defendant is broadly free to sell to whomever it chooses (with some limited exceptions which are not relevant for present purposes), subject only to the obligation to ensure that the price obtained is the best price which can reasonably be obtained. If there is a breach of that duty, then the mortgagor (or his trustee in bankruptcy) will have a claim against the Progressive.

[58] Section 21(1) of the 1881 Act is particularly relevant to the defendant's position vis-à-vis any equitable right to the property which the plaintiffs may claim. It provides that a sale of mortgaged property under the Act passes to the purchaser "such estate and interest therein as is the subject of the mortgage, *freed from all estates, interests and rights to which the mortgage has priority*, but subject to all estates, interests, and rights which have priority to the mortgage…" [italicized emphasis added]. Commenting on this provision, O'Neill in *The Law of Mortgages in Northern Ireland* (2008, SLS), at para 12.36, states:

> "This means that once the power of sale has arisen the lender can sell the mortgaged property free from all subsequent mortgages or charges. Any *subsequent* mortgages or charges are overreached on the exercise of the power of sale which means that the vendor is not expected to redeem such mortgages or charges if there is not enough equity in the property. The same principle applies to orders charging land."

[59] Thus, once the power of sale has arisen, the lender has power to sell free from all interests in the property inferior to the mortgage. In the case of a legal charge over registered land such as this, the purchaser's position is protected by section 21(2) of the 1881 Act; section 5(1) of the Conveyancing Act 1911; and paragraphs 6 and 7 of Schedule 7 to the Land Registration Act 1970. The latter provisions ensure that the purchaser is registered as owner of the land with the seller's charge "and all

estates inferior thereto" discharged. Thus, on such a sale by a lender as mortgagee any other estates, interests and rights ranking inferior to the lender's charge (here, to that of the Progressive) will be over-reached; and charges of lesser priority will be removed from the folio.

[60] In his replying submissions, Mr McAteer suggested that, whilst secondary and subsequent charges may be overreached, cautions (and inhibitions) would not necessarily be; and that his solicitors Fahy & Co had obtained correspondence from the Land Registry indicating that the Progressive could not "drive through a sale and effectively wipe out the cautions", the effect of the caution being that the buyer could not register the purchase. On consideration of this correspondence, it is clear that the Land Registry (a) was not purporting to give legal advice and, more importantly, (b) did nothing more than cite the relevant provisions of section 66 of the 1970 Act. Section 66(2)-(4) provides as follows:

> "(2) Upon lodgement of a caution under subsection (1), the Registrar shall not, without the consent of the cautioner, register any dealing on the part of the registered owner of the estate until the Registrar has served notice on the cautioner warning him that his caution will lapse after the expiration of such time as may be prescribed.
>
> (3) After the expiration of that time, the caution shall lapse unless an order to the contrary is made by the Registrar, and, on the caution so lapsing the dealing may be registered as if the caution had not been lodged.
>
> (4) If, before the expiration of that time, the cautioner, or some other person on his behalf, appears and gives, if so required by the Registrar, sufficient security to indemnify every person against any damage that may be sustained by reason of the dealing being delayed, the Registrar may delay registering any dealing for such further period as he thinks just."

[61] There are a number of points to be made in relation to these provisions and their effect in the present case. The caution provides some measure of protection in relation to "any dealing on the part of the *registered owner*." In this case, the dealing is not by the registered owner but, rather, by a legal chargee exercising its statutory power of sale (as recognized by para 6 of Schedule 7 to the 1970 Act). Second, and in any event, the effect of a caution is simply that the Registrar shall not register the dealing until notice has been given to the cautioner. The lodgement of a caution (to be contrasted, for instance, with the registration of an inhibition) is in essence a *notice*

procedure which allows the cautioner an opportunity to intervene if the registered owner of the property seeks to deal with it. The lodgement of the caution does not itself confer or endorse any estate or interest in the land claimed by the cautioner. Third, the effect of para 7 of Schedule 7 to the 1970 Act is that a sale by the Progressive transfers the land, when the purchaser is registered as owner, with its charge "and all estates inferior thereto" discharged. The ultimate issue, therefore, is whether any estate claimed by the plaintiffs is inferior to the Progressive's prior legal charge. In my view, it clearly is, for the reasons advanced by the defendant in its submissions.

[62] In a case such as the present, where the borrower has been adjudicated bankrupt, a lender in the position of the Progressive has a range of options open to it. It can (i) proceed in the normal way to obtain possession under RCJ Order 88 and sell the property itself; (ii) apply for an order for sale using procedures under the Insolvency Rules; or (iii) simply let the trustee in bankruptcy obtain possession of the property and sell it (where that is required in order to meet the creditors' claims against the bankrupt's estate). Gowdy & Gowdy (*Individual Insolvency: The Law and Practice in Northern Ireland* (2009, SLS), at para 8.87) comment that the second of these options is rarely used by the holder of a legal mortgage with a power of sale, since the first option is less expensive and much more convenient.

[63] Where the lender sells the property itself, it must distribute the sale monies to discharge any prior incumbrances (if any) to which the sale is not made subject; then pay all costs, charges and expenses properly incurred by it as incident to the sale; then discharge the mortgage money, interest and costs due under the mortgage; before finally paying the residue of the money so received to the person entitled to the mortgage property (which in the case of bankruptcy will be the trustee in bankruptcy). There can be advantages to the mortgagee selling the property itself since, where it does so, the statutory preference afforded to the expenses of the trustee where he is responsible for the sale, or other expenses which have priority in the distribution of the bankrupt's estate, does not apply; and the amount due to the mortgagee, after the costs and expenses of the sale, would be the first call on the proceeds of sale (see Gowdy & Gowdy, at para 8.90). The course being adopted by the defendant in the present case, therefore, is far from unusual.

[64] In their submissions, the plaintiffs have made a number of criticisms in respect of a range of people in relation to their past involvement in this case. The plaintiffs' case is that it is "highly probable" that the court will in due course annul the bankruptcy order. Indeed, they also raise the prospect of the court, at this remove, setting aside the IVA or declaring it void. The difficulty I see with the plaintiffs' case for present purposes is that most if not all of their criticisms are focused on the conduct of the bankruptcy and the circumstances leading to the making of the bankruptcy order. However, the party whom they wish to restrain in these proceedings – the Progressive – does not derive its interest or power of sale through the bankruptcy process. Its interest is entirely separate from, and pre-dates, the bankruptcy (and, indeed, the plaintiffs' agreement or agreements with the

Logues). All it has really been 'guilty' of is standing back from enforcing its security until, ultimately, it lost patience with the delay and decided to step in and exercise its own power of sale.

[65] In the plaintiffs' submissions, they do not dispute that the Progressive is a mortgage holder and secured lender which is entitled to be repaid, and which has the power to call in its loan, take possession of the property and dispose of it. They nonetheless rely on the Progressive's "ethical and commercial obligations to its members and the business stakeholder group with which it engages." I return to that issue below.

[66] The plaintiffs further submit that the Progressive's power of sale is to ensure it is paid in full where a borrower defaults "where there is no alternative" (the alternative offered in this case being the plaintiffs' "deal" with the Logues). I do not consider that to be a correct statement of the law. As alluded to above, the Administration of Justice Acts provide certain protections to homeowners when faced with repossession proceedings in respect of their residential properties; but this does not amount to a requirement for a lender to show that "there is no alternative" to repossession, much less so where the alternative is proposed and to be funded by a third party who has no standing and in circumstances where the borrower has been adjudicated bankrupt. (The additional powers of the court provided by section 36 of the 1970 Act arise where it appears to the court that "*the mortgagor* is likely to be able within a reasonable period to pay any sums due…") In the present case, the time for making any such proposal was before Master Hardstaff made the order for possession in the Progressive's favour. Neither Mr Logue nor the trustee have sought to do so since. Indeed, Mr Logue complied with the order by vacating the property.

***The two possession orders***

[67] In light of the difficulties with their claim which are outlined above, the defendant submits that the plaintiffs are driven to contend that the order of Master Hardstaff granting it possession of the property (as against Mr Logue) is somehow ineffective. The defendant queries the plaintiffs' standing to raise this issue and, moreover, submits that it is a novel argument unsupported by any authority.

[68] As to this, Mr McAteer asserts that it is his understanding that "the dominant/binding Order is the Order of Master Kelly", largely (it seems) on the basis that this order for possession post-dated the order made by Master Hardstaff. The trustee in bankruptcy, in correspondence, has set out his view that Master Kelly's order neither invalidates nor 'trumps' Master Hardstaff's order. His position is that both orders can co-exist and are enforceable.

[69] The plaintiffs complained at one point that the order for possession in favour of the lender had not been disclosed to them. It is difficult to see why the Progressive would be required to disclose it to a third party such as the plaintiffs.

However, the trustee has indicated that the Progressive's possession order *was* disclosed to the plaintiffs in para 6 of his statement of claim served on 20 May 2025, in the following terms: "On or about 17th April 2023, Progressive Building Society procured an Order for possession of the premises from Master Hardstaff." In any event, I am satisfied that it became clear in due course that it was the Progressive which was selling the property and – as the fact of these proceedings demonstrate – this was at a time when the plaintiffs were not prejudiced in that they could still have recourse to the court to seek injunctive relief.

[70] The key question is whether, as Mr McAteer submits, the Bankruptcy Master's Order of 26 May 2023 deprives the Progressive of its right to possession of the property or, more particularly, its right to sell the property. I have concluded that it does not.

[71] Master Hardstaff's Order of 17 April 2023 orders Mr Logue to deliver possession of the property to the Progressive "*within* 3 months after service" of the Order upon his solicitors [italicized emphasis added]. This would be by 17 July 2023 assuming (as I do, albeit that is not clear) that the Order was served on the same day on which it was granted. Master Kelly's Order of 26 May 2023 requires Mr Logue to deliver possession "forthwith" to the trustee, although the order was "*stayed* to 17 July 2023" [italicized emphasis added]. As I understand it, Mr Logue complied with the orders by voluntarily vacating the property on or about 17 July 2023.

[72] In my judgment, the important points are these:

(i) From 17 April 2023 onwards, Mr Logue was under a legal obligation to deliver possession of the property to the Progressive. He had to do that within 3 months, ie not later than 17 July, but was under a clear obligation to vacate the property in Progressive's favour. Put simply, it was entitled to obtain possession from him. In contrast, Master Kelly's Order was stayed until 17 July 2023. There was no obligation upon Mr Logue to comply with it until the stay expired.

(ii) Although there is no direct evidence in relation to this, it seems likely that Master Kelly was aware of the Order of Master Hardstaff, because her Order requires possession to be given on the same date as the latest date possible under the earlier Order. It therefore looks as though the timescales were coordinated. However, practically speaking this was simply with a view to the Logues vacating the property on or before that date.

(iii) Assuming Master Kelly was aware of the earlier Order of Master Hardstaff, it is significant that her Order did not purport to overturn, vary, stay or discharge the earlier Order.

(iv) Indeed, it is difficult to see how, on the trustee's application for possession of the property under the insolvency regime, the Bankruptcy Master could have

overturned an order for possession made against the bankrupt as mortgagor, when the mortagee's interest had priority to any interest of the bankrupt or his estate. The Bankruptcy Master was exercising an entirely separate jurisdiction, for an entirely separate purpose.

(v) The significant point is that both the trustee and the Progressive, albeit on different bases, were entitled to possession *from Mr Logue*. That is to say, in practical terms, he had to vacate the property. Possession orders such as these are remedies granted against the person in current possession of the property, enforceable through the Enforcement of Judgments Office or by an application for committal. They operate against the respondent who is in current possession. Neither Order makes provision, nor purports to provide, for any right to *sole* possession, nor for a determination of this issue as between the trustee and the Progressive *inter se*.

(vi) There is, of course, nothing inherently unusual about different persons being entitled to possession of a property at one and the same time on a variety of legal bases.

[73] In summary, Master Kelly did not purport to overturn the order for possession which the Progressive had obtained against Mr Logue; nor did her Order make any provision entitling the trustee in bankruptcy to possession of the property to the exclusion of the Progressive. Once Mr Logue had vacated the property, each was entitled to possession (on different legal bases) and it was a matter between the trustee and the Progressive as to who took or retained possession. For reasons discussed above, if push came to shove, it seems clear that the Progressive would have been entitled to possession in preference to the trustee in bankruptcy since (i) its interest had priority over that of the bankrupt, which vested in the trustee; and (ii) to deny it possession would be to undermine its status as a *secured* creditor.

[74] In any event, the debate about the two possession orders is not, in my view, critical for the purposes of the present application. That is because, first, the Progressive's power of sale under the Conveyancing Act 1881 is in law exercisable without recourse to the courts and, indeed, without vacant possession; and, second, as a matter of fact, it is presently in possession of the property.

[75] For these reasons, I reject the submission that Master Kelly's Order in any way inhibited the Progressive from taking possession of the property or exercising its power of sale under the mortgage.

***Section 5 of the 1881 Act***

[76] The plaintiffs invoke section 5 of the Conveyancing and Law of Property Act 1881, which they say enables the court to direct or allow payment into court of such a sum as is sufficient to pay off any encumbrance. They wish to pay into court "whatever sum the Court deems fit to ensure that the Progressive is paid in full."

[77] In fact, what the plaintiffs are seeking in this application, having regard to the written submissions made, is not simply an order restraining the Progressive from selling the property but, rather, a court-imposed and enforced arrangement forcing the Progressive and/or the trustee to sell the property to the plaintiffs. They nonetheless still say that they are "entitled to insist on clear and marketable title." Indeed, in a variety of the plaintiffs' documents they say that their readiness to complete a purchase is subject to "good and marketable title." It is unclear precisely how they envisage that will be achieved to their satisfaction or what impact any further process in that regard may have on their willingness to proceed or the price they are prepared to offer. It is quite possible that the defendant is concerned that this caveat would be used to seek to reduce the price already offered by the plaintiffs.

[78] Section 5(1) of the 1881 Act provides as follows:

> "Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a large additional amount."

[79] This section is confined to cases where the land is being sold, whether by the court or out of court. It permits "any party to the sale" – usually, the landowner – to make an application to the court so that the sale can proceed with the land freed from an incumbrance on payment of sufficient monies to meet the incumbrance. However, in the context of the present case, I consider that the plaintiffs' reliance on the provision is misplaced. First, it presumes that there is a sale. More importantly, however, even assuming that there is a sale (because the Progressive intends to sell the property or is in the process of doing so), the plaintiffs are not a *party* to the sale. The entirety of their case is that they *wish to be* a party to a sale.

[80] Section 5 is discussed at paras 75-76 of the *Survey of the Land Law of Northern Ireland* (HMSO, 1971). The authors (a distinguished working party, including Prof Wylie, as he later became, and under the chairmanship of Prof Sheridan) comment as follows:

> "It seems to us that s. 5 of the 1881 Act was primarily intended to cover encumbered estates, especially land subject to family settlements, with jointures and portion charges. But, largely because of the wide overreaching powers now existing in respect of settled land (under the Settled Land Acts 1882-1990), and in respect of land passing to personal representatives (now under the Administration of Estates Act (N.I.) 1955), it seems to be accepted by most commentators that the provisions would be very rarely invoked…
>
> So it seems to us that the provision in question would be useful only in the case of capital sums encumbering the land independently of a will or settlement, such as a mortgage. And in this context they might still be useful to parties, e.g., a mortgagor wishing to pay off the mortgage before the legal date for redemption or a mortgagor having difficulty in tracing the mortgagee and securing a discharge of the mortgage…"

[81] It is clear that the mortgagor can seek a discharge of the mortgage by payment of sufficient money into court under section 5 of the 1881 Act if he wishes to sell the property (see Wylie, 3rd edn, paras 13.120 and 6.145). The power can also be used, for instance, where a landowner wishes to sell property free from a rent charge. However, it has no application in a case such as this where the plaintiffs, as strangers to the present sale, wish to make a payment into court as a means of forcing a sale which is not already in progress.

***The equity of redemption***

[82] The plaintiffs also complain that the Progressive, by its conduct and "arrangement with the trustee", has "created a clog to the equity of redemption." However, the right to redeem the mortgage was enjoyed by Mr Logue, not the plaintiffs. The plaintiffs concede that "technically speaking" this is so; but say that the Logues have been "rendered impotent as a result of the IVA and the subsequent bankruptcy."

[83] But that is precisely the defendant's point. It is only Mr Logue who had the right to redeem the mortgage in this case. He could not and did not do so. Nor could he personally do so at any material time (ie at or after his agreement with the

plaintiffs) because of the IVA in the first instance and the bankruptcy order in the second. At the time of the IVA, the property was an asset pledged to the arrangement. After bankruptcy, the power to redeem the mortgage was then in the hands of the Official Receiver and then the trustee. At the present time, Mr Logue has no equity of redemption (see O'Neill, at para 13.19; and, to like effect, *Fisher & Lightwood's Law of Mortgage* (15th edition, 2019, LexisNexis), at para 22.146).

[84] I do not accept Mr Gibson's argument that the equity of redemption is lost simply because the Progressive is now in possession of the property. In making this submission, he relied upon section 15(2) of the 1881 Act. That provision disapplies section 15(1) in the event of a mortgagee being or having been in possession. However, section 15(1) does not govern the availability of the right of redemption. It simply provides that where a mortgagor is entitled to redeem, he may require the mortgagee, instead of reconveying the property to him on redemption, to assign the mortgage debt and convey the mortgaged property to a third person. The right of redemption *may* be lost where the mortgagee is in possession *and has sold* the property or where it has been in possession of the property for over 12 years in accordance with the requirements of the Limitation (Northern Ireland) Order 1989 (see O'Neill, para 13.17). The powers of the court under the Administration of Justice Acts also cease once the property has been taken into possession by the lender (see O'Neill, para 12.06). However, until the conclusion of a binding contract of sale by the mortgagee, it remains open to the mortgagee to exercise his equity of redemption (see *McCambridge v Bank of Ireland* [2002] NICh 9, *per* Girvan J at paras [6]-[7]). This argument is, however, not critical to the wider case made by the defendant.

[85] Mr McAteer's real complaint is that the trustee would not redeem the mortgage with funds provided by him (Mr McAteer). However, that is not a claim against the present defendant; nor as a result of any clog on the equity of redemption. The difficulty with that proposal seems to me to be that, if Mr McAteer provided funds to the trustee, he could not simply pass them on to the Progressive in preference to other creditors. Prima facie, they would appear to form part of the bankrupt's estate for distribution pari passu to the entire body of creditors. Mr McAteer objects that this would be unnecessary because the Progressive is a *secured* creditor. However, the nature of the security is that the defendant can secure repayment by exercising its power of sale over the property, which is precisely that which the plaintiffs seek to restrain. For these reasons, at least in the absence of further argument, I do not accept, as Mr McAteer submits, that the problem would be resolved simply by the trustee being replaced (had those attempts been progressed and been successful).

[86] The equity of redemption has not been assigned to the plaintiffs. In those circumstances, the remaining way in which they may be able to control the sale of the property is if they were assigned the Progressive's rights in the mortgage, described in submissions as them 'buying' the mortgage debt. In Mr McAteer's closing submissions he suggests that the court order that the plaintiffs pay off the

mortgage (and that Progessive accept this). They say they have been offering to do this since June 2020. It is clear, however, that there have been negotiations between the plaintiffs and the Progressive (and the trustee) over a period of years and an acceptable agreement or arrangement has not been capable of being reached. The plaintiffs submit that section 5 of the 1881 Act is a mechanism which would allow the Progressive to be paid off without its active agreement. For the reasons discussed above, I do not consider that this avails the plaintiffs.

[87] In summary, the plaintiffs neither enjoy the benefit of the equity of redemption nor have they been able to reach an agreement with the Progressive to buy out its security. They are therefore extraneous third parties seeking to interfere with the exercise of the defendant's legal rights as mortgagee. That context is significant when considering the various factors mentioned at para [50] above which are relevant to the exercise of the court's discretion whether or not to grant an interlocutory injunction, to which I now turn.

***A serious issue to be tried?***

[88] The plaintiffs have essentially raised four causes of action upon which they rely against the defendant, namely (i) negligence, (ii) breach of statutory duty, (iii) conspiracy, and (iv) unlawful interference with the plaintiffs' economic interests. I turn to each of these below. It is notable, however, that the plaintiffs have not pleaded breach of contract against the Progressive. This is perhaps unsurprising since all of the correspondence, at the time when the Progressive had accepted an offer to purchase the property on behalf of the McAteers, was marked "subject to contract." This cannot therefore be a sufficient memorandum for the Statute of Frauds (see *Bonner Properties Ltd v McGurran Construction Ltd* [2010] NI 97, *per* Girvan LJ, at paras [12]-[13]). Mr McAteer has also confirmed in his closing replying submissions that he accepts that at no stage did the plaintiffs reach the point of having a binding contract with the Progressive.

[89] I do not consider there is a serious issue to be tried in respect of negligence. The simple answer to this claim is that there is no basis for asserting that the Progressive, as mortgagee in possession, owes a duty of care (to avoid pure economic loss) to the plaintiffs. Albeit that the defendant is aware of the plaintiffs' claims in relation to their agreement with the Logues, in the present context the defendant and plaintiffs are strangers to each other, at arm's length, in the position simply of vendor and potential purchaser.

[90] It is also of note that section 21(6) of the 1881 Act provides as follows:

> "The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust

> connected therewith or of any power or provision contained in the mortgage deed."

[91] Parliament has clearly set its face against the imposition of any tortious duty of care upon a lender selling as mortgagee, even to the borrower or subsequent secured lenders. As O'Neill points out (at para 12.25), the duty of care imposed on a lender selling as mortgagee in possession is one that arises in equity, rather than in contract or tort.

[92] Likewise, I do not consider that there is a serious issue to be tried in respect of breach of statutory duty. The plaintiffs have not particularized this claim nor specified any statutory duty alleged to be owed to them by the defendant. They do seek relief on the basis of section 5 of the 1881 Act, which I have considered separately above. However, this does not in my view create a duty towards the plaintiffs; nor do the plaintiffs expressly allege that it does.

[93] The separate "breach of duty" claim is similarly unparticularized. However, for the reasons already discussed, it is difficult to see how any duty arises which is owed by the defendant to the plaintiffs in this context. The plaintiffs have made a vague reference to the defendant's "ethical and commercial obligations to its members and the business stakeholder group with which it engages." These are not, in my view, legally enforceable obligations which can avail the plaintiffs in a context such as the present. Mr McAteer relies upon the Progressive's status as a mutual society and suggests that this gives rise to a duty of care to third parties, their members and (in the plaintiffs' case) external or indirect "stakeholders." He relies upon statements in its recent annual report to the effect that it works within communities to bring positive outcomes and stands for "fairness, transparency and, above all, doing business in an empathetic and ethical way." The suggestion appears to be that the court can itself decide what is best for the Progressive's members and require the defendant to act accordingly and/or restrain it from acting otherwise. However, in my view none of these matters gives rise to an enforceable duty in tort or contract in the present case, if indeed in any case.

[94] There are equitable duties owed to the borrower, subsequent lenders and guarantors of the mortgage debt; but these are not owed to third parties such as the plaintiffs. Those duties are to act in good faith and to obtain the best price reasonably obtainable. Witchell (supra) comments that the extent of the duty of care imposed on the mortgagee exercising the power of sale has been the subject of some controversy. However, "the power is conferred on the mortgagee primarily to realise his own security and although he must act in good faith, he cannot be attacked for his motives in selling." To like effect, *Fisher and Lightwood* at para 30.23 observe:

> "The power of sale is given to the mortgagee for his own benefit, to enable him the better to realise his debt. Accordingly, his own interests come before those of the

> mortgagor. The mortgagee is not a trustee of his own power of sale for the mortgagor and nor is he under a general duty of care to the mortgagor. He can, therefore, act in his own interests in decide whether or not to exercise his power of sale. If the mortgagee does decide to exercise his power of sale, he can likewise act in his own interest in deciding when to exercise it, subject to his duty to obtain the best price reasonably obtainable. He is entitled to sell even though a sale (or the time, or the terms, of the sale) may be disadvantageous to the mortgagor."

[95] It is unclear whether the Progressive is proposing to sell the property at a value less than that offered by the plaintiffs. (The plaintiffs assert that their offer is the highest; but the court is unaware of the price being offered by the current prospective buyer.) However, if there is a breach of the equitable obligation to obtain the best price reasonably available for the property, this is enforceable by the trustee in bankruptcy, standing in the shoes of the bankrupt as mortgagor (at least in the first instance; and potentially by Mr Logue in due course once the bankruptcy is discharged). This is not a duty owed to simply any interested third party. Moreover, the obligation is not simply to secure the highest price but the best price "reasonably available."

[96] Turning to conspiracy, I do not consider there is a serious issue to be tried in relation to unlawful means conspiracy. I do not consider the plaintiffs to have raised a serious case that the Progressive has acted in a way which is unlawful, nor that there has been any agreement to injure them by the use of unlawful means. As to lawful means conspiracy, the defendant describes this as "a chimera", pointing out that the House of Lords has accepted that it is a "highly anomalous cause of action" since it may render two or more individuals liable for an act which would be lawful if done by one (see *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, at 188). Nonetheless, the tort still exists at common law and is capable of being pleaded and established. The defendant therefore also denies that the essential elements of this tort are arguably established because, it contends, the plaintiffs have suffered no loss or damage; there is no evidence of any agreement between the trustee in bankruptcy and the defendant; and, further, it cannot be shown that the predominant purpose of the defendant was to injure the plaintiffs.

[97] For present purposes, I am prepared to assume that the plaintiffs have suffered, or may suffer, some loss. Further, although there is no evidence to this effect, I am prepared to assume that some discussion between the trustee in bankruptcy and the Progressive may have taken place by which the former stepped back from attempts to sell the property in favour of the latter doing so. However, it seems to me that there is no evidence, and it is far-fetched to suggest, that this was done with the predominant purpose of injuring the plaintiffs. Action taken to protect a party's own legitimate interests has been held to be lawful in this context,

even if the 'spin-off effect' is damage to a third party's interests. If the predominant purpose was the lawful protection or promotion of the interests of the combiners (and no illegal means is employed), the actions will not constitute a tortious conspiracy even though it causes damage to another person: see *Crofter Hand Woven Harris Tweed Co v Veitch* [1942] AC 435, at 445, and, more recently, *MX1 Ltd v F* [2018] EWHC 1041 (Ch), at para [22](3). The Supreme Court has emphasized that economic torts are carefully defined "so as to avoid trespassing on legitimate business activities" (see *JSC BTA Bank v Ablyazov (No 14)* [2020] AC 727, at para [6].

[98] In this instance, the Progressive, with the benefit of an order for possession in its favour, was and is simply seeking, without further delay, to enforce its charge in order to discharge Mr Logue's indebtedness to it. The fact that it was in principle prepared to sell the property to the plaintiffs – with this sale only falling through when an impasse was reached over documentation which the Progressive as vendor was unwilling or unable to provide – strongly indicates that there is no desire on its part to damage the McAteers' position per se. That they as purchasers were unwilling to proceed on the basis proposed was a matter for them.

[99] The plaintiffs also raised the issue of the Progressive acting as agent of the trustee in bankruptcy. I accept the defendant's submission that there is no evidence that the Progressive has agreed any relationship of agency with the trustee. If the property is sold by the Progressive, it will be a trustee of the proceeds of sale as a result of the legal rules applicable in this context such that, once its costs and Mr Logue's indebtedness to it are discharged, it must then account to the trustee for any excess. However, that is not to say that the Progressive acts as agent for the trustee. Moreover, the fact that each separately sought orders for possession against Mr Logue suggests that they were acting independently.

[100] Finally, the plaintiffs rely upon alleged unlawful interference with their economic interests; but I do not consider that this adds anything material to the reliance upon the specific economic torts discussed above.

[101] In light of the discussion above, I consider that there is force in the defendant's objection that, in truth, it owes no duties to the plaintiffs in the present context. It is free to sell the property to them if it wishes (and they make the best offer available); or to do otherwise. If the defendant is right that there is no serious issue to be tried in this case, as on analysis I consider to be the case, the claim for an interlocutory injunction falls away. However, I nonetheless consider the further elements of the *American Cyanamid* test in case I am wrong in this conclusion (particularly in relation to the conspiracy aspect of the case). If there is a serious issue to be tried, in my view it would remain a highly ambitious case on the part of the plaintiffs.

*Are damages an adequate remedy?*

[102] The defendant further submits that damages are an adequate remedy for the plaintiffs (although they would be difficult to quantify on the basis of the pleaded causes of action). The plaintiffs submit that damages are not an adequate remedy because what they ultimately seek is the conveyance to them of this specific property. On the plaintiffs' case, the property ideally meets the needs of their daughter as it has unique features and a location which suits her long-term domestic and professional plans.

[103] This is a finely balanced issue. It is difficult to divorce an assessment of the adequacy of damages in this case from the nature of the causes of action pleaded. For the reasons discussed above, I do not consider that the plaintiffs have a property right in play, or at least one enforceable against this defendant. As discussed in the *Siskina* case (supra), the interlocutory injunction sought in the action should be part of the substantive relief to which the plaintiff's cause of action entitles him. A successful claim on the basis of an economic tort would ordinarily result in an award of damages, which is likely to be adequate in a case such as this if the tort pursued is focused on economic damage. I also take into account that the plaintiffs have never been in possession of the property. Their real concern in these proceedings is simply to stall the sale until such time as they might, in future, secure some further relief in *other* proceedings, namely the 2023 proceedings or some other forum. For these reasons, I have severe doubts about whether damages would be an inadequate remedy for the plaintiffs given the causes of action relied upon which would ordinarily attract damages only.

[104] However, on balance, I do not believe that an injunction should be refused on that basis alone. There is an argument that damages are inadequate for the plaintiffs, since this case is ultimately about preserving a particular property which, at some point, they seek to obtain. On the other hand, I consider that damages would clearly be an adequate remedy for the defendant if it is wrongly restrained from proceeding with the sale pending the outcome of these proceedings. Its interest in the sale is purely financial. I consider it could be adequately compensated in damages on foot of an undertaking in damages from the plaintiffs in the event that an interlocutory injunction is granted.

[105] This factor, therefore, does not appear to me to be wholly determinative. There is sufficient doubt about the matter that it is appropriate to consider the balance of convenience.

*Balance of convenience and status quo*

[106] I consider that the balance of convenience favours the refusal of an injunction for the following reasons. The Progessive has a debt, secured by a charge on the property, which continues to grow. Although this may be of little concern to the defendant (in the context of a rising property market and where there is a

substantial amount of equity in the property), the continued increase in the debt is not generally in the interest of Mr Logue (or his trustee in bankruptcy), nor of the unsecured creditors, including the plaintiffs. Put simply, it would have been in all parties' interests for the property to have been sold some time ago, particularly bearing in mind that the respective possession orders were made in mid-2023. Moreover, the plaintiffs' position is not unduly prejudiced by a sale on the open market at this point if – as the facts show – they are free to bid on the property and purchase it from the Progressive on the same terms as it is offered, and seemingly acceptable, to others.

[107] Insofar as relevant, I also consider that the presumption in favour of the status quo favours the refusal of the injunction. The defendant is a mortgagee in possession with a power of sale and in the process of completing the sale. The plaintiffs have never owned or been in possession of the property. As McBride J pointed out in the *Drennan* case at para [19](v), the preservation of the status quo involves a consideration of whether the injunction would postpone the date upon which the defendant is able to embark upon a course of action which he had not previously undertaken or whether it would *interrupt* him in the conduct of an established enterprise and therefore cause much greater inconvenience to him (since he would have to start again to establish his enterprise in the event that he succeeded at trial). In this case, the defendant has been marketing the property for some time, has now agreed a sale subject to contract and would (it seems) have concluded the sale but for this application at the eleventh hour.

***Conclusion***

[108] For the reasons given above, I consider that the proper course is to refuse the application for an interlocutory injunction. As against this particular defendant, I do not consider that the plaintiffs have identified a cause of action which raises a serious issue to be tried. Alternatively, any case which does raise such an issue is a weak case in the circumstances and/or highly unlikely to give rise to a remedy which ultimately results in the Progressive being required to sell or convey the property to the plaintiffs as opposed to an award of damages. In those circumstances, even if there is a serious issue to be tried, I do not consider that it is just and convenient to grant, or that the balance of convenience favours the grant, of an interim injunction restraining sale of the property.

[109] To some degree, I understand the frustration felt by the plaintiffs who considered they had achieved a good deal in their arrangements with the Logues. A key difficulty for them is that that arrangement was reached *after* Mr Logue entered into an IVA which rendered the property an asset of the arrangement; and that Mr Logue thereafter was thereafter adjudicated bankrupt. In any event and more fundamentally, whether or not the plaintiffs have a good claim against the bankrupt's estate, the present defendant's interest in the property is prior and superior to any such interest which might have been created in their favour by Mr Logue. The mortgagee is in my view entitled to say that it has waited long

enough and now wishes to exercise its own, independent legal rights to protect its commercial interests. In the meantime, the plaintiffs were free to seek to reach an agreement with the Progressive which was acceptable to both, which has not proven possible. However, it is not a matter for the court to impose terms of sale on the defendant; nor, in my view, to restrain it in the exercise of its power of sale in all of the circumstances of this case.

[110] Accordingly, the application for an interlocutory injunction is refused.

[111] I will hear the parties on the issue of costs.

[112] Pending determination of this application, the defendant gave an undertaking to the court through counsel that it would not enter into a contract for sale of the property with any other proposed purchaser without first giving one week's notice to the plaintiffs if it was proposing to do so. This was in order to protect the plaintiffs' position by permitting them to make an application to the court for urgent injunctive relief. (There was a suggestion by the plaintiffs, in light of a priority search by other intending purchasers and entry of a priority note on the register, that this undertaking may have been breached. However, through its solicitors the defendant has assured the court that no contract has been concluded in light of these extant proceedings and in accordance with the undertaking it had provided.) The defendant will be released from that undertaking 21 days after the giving of this ruling, which reflects the time period for appeal by the plaintiffs under RCJ Order 59, rule 4(1)(a).