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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 09/23383/14

Delivered: 10/03/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Between:

MARTIN KEVIN McGEE

and

BERNADETTE PATRICIA McGEE

Applicants

-and-

MORAG FINANCE LIMITED

Respondent

**Anthony Brennan (instructed by Jim Rafferty & Co, Solicitors) for the Applicants
Robert McCausland (instructed by TLT LLP) for the Respondent**

SCOFFIELD J

Introduction

[1] By this application the applicants (the defendants in the original repossession proceedings) seek an interim injunction restraining the respondent (as successor to the lender and plaintiff in the original repossession proceedings) from selling their former home, of which the respondent has now been in possession since July 2025. That appears to be the primary relief sought. However, the notice of motion generally seeks an order staying or setting aside possession in relation to the relevant property (9 Clontycarty Lane, Tynan, Armagh); and an order requiring disclosure by the respondent of a wide range of documents.

[2] Mr Brennan appeared for the applicants and Mr McCausland for the respondent. I am grateful to each of them for their written and oral submissions.

Factual background

[3] It is common case that, on 17 July 2007, the applicants entered into a mortgage with Amber Homeloans Limited (“Amber”) in respect of the property at Clontycarty Lane, Tynan. The mortgage deed was executed by them, charging the property to Amber. In broad terms, the original advance was in or around £200,000. In due course, Amber issued mortgage repossession proceedings on 2 March 2009 when the McGees defaulted on their mortgage payments. An order for possession was made on 14 December 2009. On the respondent’s case, the applicants have spent 16 years seeking to thwart and obstruct the enforcement of that order.

[4] A wide range of applications brought by or on behalf of the applicants are outlined in the respondent’s written submissions; and a wide range of court orders dealing with these applications are appended to those submissions. It is unnecessary to set out the detail of these at any length but a few staging points are mentioned below. In 2013 an order of Master Ellison suspended the possession order on the basis that certain monthly payments would be made. In due course, however, there was further default. In June 2015, Master Hardstaff granted leave to enforce the possession order. Further stay applications on behalf of the applicants followed, all of which appear to have been dismissed by the courts at different levels. At various points the applicants appear to have been assisted by solicitors or housing rights advisers. In recent times, however, it seems they have principally been self-represented.

[5] On 7 April 2017, Amber entered into a mortgage sale agreement with Morag Finance Limited (“Morag”). This fact resulted in, or at least featured in, a range of further applications by or on behalf of the applicants alleging, inter alia, lack of jurisdiction. A summons to that effect was struck out by Master Hardstaff in December 2018.

[6] On 12 December 2017, an application was made to the Land Registry on foot of the mortgage sale agreement to transfer the charge over the applicants’ property from Amber to Morag. Mr McGee objected to this transfer by notice of objection dated 17 January 2018. The Registrar dismissed the notice of objection, which was confirmed in January 2019. Mr McGee appealed that dismissal. The appeal was dismissed by McBride J in May 2020. That decision was appealed to the Court of Appeal which dismissed Mr McGee’s appeal on 12 May 2021: see *McGee v Morag Finance Limited and Amber Homeloans Limited* [2021] NICA 29.

[7] Morag then proceeded with enforcement of the possession order. Mr McGee lodged a further objection and a further stay application in January 2023. The Enforcement of Judgments Office (EJO) dismissed the objection; and the further stay application was dismissed in May 2023 with the Chancery Master again granting leave to enforce. That order was also appealed by Mr McGee but the appeal dismissed by Huddleston J. Several further stay applications have since been made, between late 2023 and early 2025, and all dismissed also. I was told that, at the

present time, the outstanding balance on the mortgage account is now in excess of £550,000.

[8] Eviction was scheduled for July 2025. Mr McGee liaised with the EJO and indicated that the applicants would leave the property voluntarily. On that basis, the EJO disclosed the proposed eviction dates. When EJO officers attended the property, the keys were handed over. However, the property had been vandalized with spray-painted phrases prominently displayed on the interior walls of various rooms, such as “Family home, No sale”, “Not wanted”, and “No sale, Keep out.” The obvious concern is that the applicants may have caused or permitted this damage in a further attempt to delay or thwart the respondent from exercising its power of sale.

[9] In the meantime, documentation publicly available from Companies House indicates that a company called Zephyr Funding Limited (“Zephyr”) registered a charge, created on 17 September 2018, over an asset or assets of Topaz Finance Limited (“Topaz”). The significance placed on this by the applicants is addressed in further detail below. A copy of the security agreement creating the charge is also available and has been produced and relied upon by the applicants. It is entitled ‘Security Agreement over Bank Account’ and indicates a charge created by Topaz in favour of Zephyr in respect of one identified bank account (the name of the account being ‘Topaz Finance Ltd Fund’) set out in the second schedule to the security agreement. The recitals to the agreement indicate that, under an asset purchase agreement entered into between the chargee and charger, the chargee (Zephyr) may from time to time transfer funds to the bank account for the charger to use in originating mortgage loans. It seems clear that the agreement relied upon relates only to the creation of security in the specified bank account by way of first fixed charge in favour of Zephyr.

[10] The applicants also rely, in particular, upon relatively recent correspondence dated 16 October 2025 (“the October 2025 letter”) which Mr McGee received from the respondent. This is from Morag Finance, addressed to Mr McGee at the property, and indicates that his third-party authority is due to expire soon. This relates to third-party authority granted to RTM Mortgage Services Ltd which had been authorised to contact Morag to request, discuss and provide information about Mr McGee’s account and to make payments on his behalf. This authority was due to expire in mid-December 2025. Mr McGee was advised that if he no longer needed them to help with his account he need do nothing; but that he could extend the authority (or appoint a new third-party with similar authority) by completing an enclosed form. I return to the significance – or insignificance – of this aspect of the letter below. Mr Brennan also relied, however, on the fact that, in a footer to the letter, the following text appears: “Morag Finance is a trading name of Topaz Finance Limited, a company registered in England & Wales (Company Number 05946900).”

Summary of the parties' positions

[11] Until very recently, Mr McGee has been acting in this application as a litigant in person. A range of the documents submitted by him contain arguments which appear to me to be spurious. I am also concerned that at least one authority upon which he purported to rely (said to be a decision of Kerr J in the Court of Appeal from 2003: *McCartney v McCartney* [2003] NICA 41) does not exist. The citation relates to another case and I have been unable to find the authority after a number of searches. Mr Brennan withdrew any purported reliance on it. Mr McGee also purported to rely upon various provisions of the Land Registration Act (Northern Ireland) 1970 and the associated Land Registration Rules (Northern Ireland) 1994 which, upon examination, plainly did not support the propositions in support of which they had been cited.

[12] The respondent contends that Mr McGee has engaged in “one of the most extensive and prolonged sequences of applications for a set-aside, stay and/or injunction” that the Chancery Court has had to address in recent years, purely as a means of spoiling of delaying tactics. It emphasises that the possession order has been enforced and that it is in possession. It submits there is no merit in the arguments which had been raised by Mr McGee.

[13] Shortly before the hearing of this application, however, I was told that Mr McGee had now instructed legal representatives, in the form of Mr Brennan, of counsel, instructed by Jim Rafferty & Co, Solicitors. Mr Brennan sought, and I permitted, a short adjournment in order to reformulate the arguments relied upon by the applicants. In light of the procedural history of this particular application, which I need not outline for present purposes, I did not permit the filing of any further evidence on behalf of the applicants. In the event, Mr Brennan provided a detailed skeleton argument which focused on the central issue of the respondent's standing to enforce the charge upon which it relies. A serious issue to be tried arose in respect of this standing, he submitted, because of the securitisation arrangements evident from the charge granted by Topaz to Zephyr (see para [9] above). Mr Brennan candidly accepted that any challenge to the validity of the transfer of the charge from Amber to Morag had been conclusively determined by the decision of the Court of Appeal (see para [6] above).

[14] Meeting this new case - or, at least, a much more focused reformulated case - Mr McCausland's central submission was that there was simply no evidential basis to suggest that the respondent had in fact transferred the legal or beneficial interest in its charge over the plaintiffs' property, such that no serious issue to be tried arose in this regard. The fact that Morag was demonstrably the legal owner of the charge was sufficient to dispose of any challenge to its standing to enforce it. In the alternative, he argued that injunctive relief should be refused in any event on the application of the *American Cyanamid* principles.

[15] A small number of authorities were opened to me in the course of argument and/or were provided by the parties after the hearing for the court's consideration. An important authority in this area is *Paragon Finance plc v Pender* [2005] 1 WLR 3412 ("*Pender*") upon which Mr McCausland strongly relied but which Mr Brennan submitted could be distinguished. Mr Brennan also relied heavily on the judgment of His Honour Judge Malek, sitting in Burnley County Court, in *Lloyds Bank Plc v Cook* [2025] EWCC 43 as indicating that *Pender* was not the last word on this issue and that a standing challenge such as the applicants' could not simply be summarily dismissed. I return to each of these authorities below.

Consideration

[16] It is common case that Morag is the registered owner of the relevant charge over the applicants' property. That is clear from the judgment of the Court of Appeal referred to above and, for present purposes more importantly and more recently, from an up-to-date Land Registry search in relation to the relevant folio (Folio 30157 Armagh) provided by the respondent. The charge was first registered by Amber on 3 October 2007 and it was transferred to Morag on 12 December 2017. Under section 11 of the 1970 Act, the register is (save as otherwise provided by and under that Act) conclusive evidence of the title shown.

[17] In those circumstances, Morag relies upon the following passage in the judgment of Jonathan Parker LJ in the *Pender* case at para [109] in relation to its title to sue:

"It is common ground that Paragon, as registered proprietor of the legal charge, retains legal ownership of it. One incident of its legal ownership – and an essential one at that – is the right to possession of the mortgaged property. I can see no basis upon which it can be contended that an uncompleted agreement to transfer the legal charge to the SPV (that is to say an agreement under which, pending completion, the SPV has no more than an equitable interest in the mortgage) can operate in law to divest Paragon of an essential ingredient of its legal ownership. In my judgment as a matter of principle the right to possession conferred by the legal charge remains exercisable by Paragon as the legal owner of the legal charge (i.e. as the registered proprietor of it), notwithstanding that Paragon may have transferred the beneficial ownership of the legal charge to the SPV."

[18] The legal owner of the charge was a necessary party to any claim to possession of the property in right of the legal charge. The judge went on to examine whether the SPV should have been joined as an additional claimant; and answered this question resoundingly in the negative (see para [111]). Even if the

beneficial interest in the charge had been transferred to the SPV, and Paragon retained its legal ownership of the charge as trustee for the SPV, it did not follow that the SPV was a necessary party to the claim for possession. On the facts of that case, it was held to be “wholly unnecessary” for the SPV to be joined since there was no issue between it and Paragon as to the exercise of the mortgagee’s rights under the legal charge. By virtue of administration arrangements which were available to the court, it could see that the SPV had expressly authorised Paragon to exercise such rights on its behalf.

[19] The passage set out at para [17] above is a powerful point in the respondent’s favour. As legal owner of the charge over the property at Clontycarty Lane, it is entitled to possession and entitled to enforce the charge (Mr McCausland submits) *even if*, which it has not, it had divested itself of the beneficial interest in the charge.

[20] For his part, Mr Brennan made two essential points about the *Pender* case. First, he argued that it could be distinguished on several bases. Second, he argued that, in light of the discussion in *Cook*, it should not be followed without further argument.

[21] As to whether *Pender* can be distinguished from the present case, Mr Brennan raised four points of asserted distinction. On analysis, it seems to me that these resolve to two basic points. First, in *Pender* there was an uncompleted transfer of the charge whereas, in this case, there was a crystallised fixed charge. Second, in *Pender* the administration agreements between the two entities had been produced and were available to the court whereas, in this case, no discovery has yet been made of any securitisation agreements or arrangements. From the documents available in *Pender*, one could see that the knowledge and consent of the beneficial owner of the charge was not in issue, whereas in the present case it is.

[22] All of this drives one back to the security agreement provided by the applicants and relied upon by them as showing that the charge over *their* property has been transferred by Morag to Zephyr, such that Zephyr either required to be joined as a plaintiff (or defendant) in Morag’s enforcement proceedings or that Morag required to show its consent to enforcement in order to have sufficient standing to pursue this. On the evidence provided by the applicants, I do not consider them to have raised a serious issue to be tried in relation to this.

[23] I accept Mr McCausland’s submissions that the security agreement which is treated as central and determinative by the applicants, of itself, has limited (if any) relevance to the ownership of the charge in this case. It is between two separate legal entities, Topaz and Zephyr, neither of which is the owner of the charge in question. Albeit there appears to be some commercial relationship between Topaz and Morag evident from the footer to the October 2025 letter (see para [10] above), there is not one iota of evidence supporting the applicants’ assertion that the legal or beneficial ownership of the charge has been transferred by Morag. The suggestion in submissions that the security agreement transferred the beneficial interest in

Morag's entire mortgage portfolio (and, hence, the relevant charge over the property) is not supported by the terms of the document. It represents complete speculation about *other* potential securitisation arrangements of which there is no evidence. The terms of the security agreement, even assuming Topaz stood in the shoes of Morag (as to which there is no evidence), relate only to one bank account which has no apparent relevance to the charge in the present case. The true distinction between the *Pender* case and the present is that, in *Pender*, it was clear that the legal owner of the charge *had* transferred the beneficial interest in it to another entity (by way of a sale of its mortgage portfolio); whereas in the present case, there is no evidence at all that the legal or beneficial interest in the charge over the property has been transferred by Morag.

[24] I also do not consider that the applicants are materially assisted by the decision of His Honour Judge Malek in the *Cook* case. In the first instance, and most importantly, unlike in the present case, the lender in the *Cook* case accepted that the relevant mortgage had been securitised and that (as in *Pender*) the beneficial interest in the mortgage had been assigned (see para [12] of the decision).

[25] Second, far from establishing that wide-ranging discovery would be required simply because the chargor raised the issue of securitisation, the judge rejected arguments as to enforceability which, in his view, were "speculative" (see, for instance, paras [20]-[21]). No reasonable ground for defending the possession proceedings was disclosed by arguments – such as in this case – where discovery was sought simply as a means of rebutting a speculative assertion: that was "to put the cart before the horse" and, mixing metaphors, "a fishing expedition for a potential defence" (see paras [22]-[23]). To like effect the argument, which is reticent of a number of points made by the applicants in this case, that the debtor's case could only be dealt with after detailed disclosure had been made by the bank (referred to as the "premature determination argument") was rejected as a standalone ground: see paras [10](e) and [36].

[26] Mr Brennan is right to say that Judge Malek identified a tension between the clear approach in *Pender* (discussed above) on the one hand and, on the other, the position of the majority on equitable assignment of a chose in action in *Three Rivers DC v Governor and Company of the Bank of England* [1996] QB 192: see para [29] of his judgment. In the *Three Rivers* case, the majority considered that the equitable assignee became the owner and controller of the legal chose such that it would usually be required to be joined as a party to the enforcement proceedings or that the assignor must sue expressly in a representative capacity. That was applied by the English Court of Appeal in *Bexhill UK Limited v Abdul Razzaq* [2012] EWCA Civ 1376. However, as Judge Malek recognised, *Pender* was decided without reference to *Three Rivers*; and *Bexhill* was decided without reference to *Pender*.

[27] In my judgment, this debate is likely to be sterile in the present case since, as discussed above, there is no evidence, let alone concession, that the charge over the applicants' property has been transferred or assigned in any way by Morag.

[28] However, I have been given some pause for thought as a result of the decision of McBride J in *Presbyterian Mutual Society Ltd v Dodds* [2021] NICH 2 (an authority not referred to by either party but one of several in this jurisdiction where the *Pender* case is discussed). There are two salient features of that case which are relevant for present purposes. First, McBride J recognised the practical reality that, at least in many cases, the borrower will have “no knowledge of the lender’s arrangements” in relation to securitisation (see para [47]). Recognising that this cannot be permitted to lead to protracted and costly discovery exercises where title to sue is simply put in issue because of a potential securitisation issue, the judge referred to the guidance provided by Horner J in *Swift Advances plc v McCourt* [2012] NICH 33 (a case which was relied upon by Mr McCausland). That permits the matter to be dealt with by way of affidavit evidence on behalf of the financial institution, with an express warning having been given to the relevant deponent about the need for accuracy when addressing the issue of title to seek an order for possession. This was considered a sensible and proportionate method of dealing with a challenge by a borrower to the lender’s locus standi. No such averment has been made in the present case. Mr Brennan invites me to draw an adverse inference from that fact and/or the fact that a broad range of disclosure has not simply been voluntarily produced by the respondent. I am not prepared to do so. Those matters may equally be explicable because the standing challenge has only properly been articulated on behalf of the applicants at an extremely late stage and, until the provision of Mr Brennan’s skeleton argument the day before the hearing, the respondent was meeting a different case which had been formulated by Mr McGee himself as a litigant in person.

[29] Second, McBride J was not prepared to proceed on the basis that *Pender* provided a complete answer simply because the plaintiff in that case remained the registered owner of a legal charge (see paras [49]-[54]). Having referred to the *Bexhill* case, she considered that, depending on the arrangements made, the equitable assignee of any charge may need to be joined as a party. Accordingly, she considered that the issue of title required to be investigated in the manner set out by Horner J in *Swift v McCourt*.

[30] On a brief review of some authorities in this jurisdiction relevant to the issue, it may be that some other judges have taken a more robust approach to this question than did McBride J in *Presbyterian Mutual Society Ltd v Dodds*, simply applying the dictum of Jonathan Parker LJ in *Pender*. I further note that, returning to the *Cook* case, Judge Malek also indicated that he preferred the reasoning of the court in *Pender* (which aligned with that of Staughton LJ, in the minority, in *Three Rivers*) than that of the majority in *Three Rivers* or the court in *Bexhill*: see para [32] of his judgment. That is because the mischief addressed in *Three Rivers* – that of double vexation of the debtor – appeared wholly improbable in fact; and all that would be gained by joining the assignee of the charge to the proceedings would be increased costs and delay. However, it may be right that the tension identified in *Cook* cannot

be said to be wholly absent from the relevant line of authority in this jurisdiction. That may require fuller argument on another occasion.

[31] I find it difficult to conceive, however, of why – even if the applicants were correct in their speculation that there had been some securitisation of their mortgage in favour of a third-party funder *and* the realisation of the security had not been wholly delegated to the respondent – that assignee would object to, or not provide consent for, the exercise of the power of sale in a case such as this. The default on the mortgage payments is substantial and growing and the assignee’s commercial position could only worsen by allowing matters to continue. Whether or not Morag would hold the proceeds of sale on trust for such a third party, there is an obvious commercial sense in the security being realised expeditiously.

[32] Finally, turning to the October 2025 letter upon which the applicants place significant reliance, they contend that it shows that the respondent continues to administer an active mortgage account which is “inconsistent with completed enforcement” and/or is more consistent with Morag operating as ‘servicer’ rather than beneficial owner of the charge. I reject that submission. In my judgment, there is nothing unusual or strange about the respondent still administering an account in relation to the lending to the McGees for the simple reason that they still have a mortgage debt which has not been discharged. However unlikely, until the property is sold, it would still be open to the McGees to seek to redeem the mortgage in this case. The correspondence giving them an opportunity to update the position in relation to third-party authority is a simple administrative matter which has been invested with significance in their submissions far beyond its true import.

Conclusion

[33] Where does all of this take me? I have decided to refuse the application for an interim injunction on the following bases:

- (i) As I recently discussed in *McAteer v Progressive Building Society* [2026] NICH 4 (which also discussed the relevant authorities in relation to the grant of an interlocutory injunction in a similar context), a chargee or mortgagee in possession has a wide power of sale. It is not lightly to be thwarted from exercising this power of sale once in possession.
- (ii) The lender in this case (Amber and, more recently, Morag) has been obstructed over a lengthy period of time, by numerous unmeritorious applications seeking to deny it possession or thwart its realisation of its security.
- (iii) The issue of Morag’s standing has been raised at a very late stage. The proper time at which this matter should have been put in issue by the McGees is when the lender was seeking leave to enforce the possession order or actual enforcement on foot of the possession order. Once put in issue, the lender

could have been dealt with the matter in accordance with the guidance provided by Horner J in the *Swift v McCourt* case. Instead, the applicants are only now making a case on the basis of documents registered with Companies House which had been publicly available for some seven years before the present case has been properly articulated.

- (iv) On the basis of the limited evidence relied upon by the applicants in this regard, I do not consider that they have raised a serious issue to be tried on the issue of Morag's standing. At this stage in the process, where Morag is the legal owner of the charge, and where a possession order has been granted and enforced, the onus is clearly on the applicants to raise a serious issue to be tried on the basis of evidence rather than mere speculation.
- (v) If I am wrong in that, and a serious issue has been raised simply by virtue of the material produced by the applicants and inferences properly to be drawn from it, allied to the fact that they cannot be expected to be in possession of all relevant information about the respondent's securitisation arrangements (if any), this nonetheless appears to me to be a weak case.
- (vi) Moreover, it further appears to me that any such objection could only avail the applicants by way of a further, short-lived stalling tactic. Even assuming – as to which there is no evidence – that Morag had divested itself of the beneficial interest in the charge, it is difficult to see why any relevant assignee would not consent to progressing the sale in circumstances where the mortgage debt (and the shortfall offered by the security) simply continues to grow. Echoing Judge Malek in *Cook*, all that would be gained from joining any assignee to the proceedings would be increased costs and delay. To like effect, see Deeny J's characterisation of a similar objection representing only a "short-term gain" in *Santander (UK) Plc v Carlin & Hughes* [2013] NICH 14, at para [2].
- (vii) Assuming that damages would not be an adequate remedy for the applicants, I do not consider that damages would be an adequate remedy for the respondent either in this case. That is because, albeit its interests are financial only, I do not consider there to be any reasonable prospect of the applicants being in a position to meet any claim for damages arising from the respondent having been wrongfully restrained from sale on an interim basis. The applicants' indebtedness appears to now far exceed the value of the security offered by the property; the first applicant has previously been adjudicated bankrupt; and no undertaking in damages has been offered by them, as the court would usually expect and require.
- (viii) It is also relevant to both the balance of convenience and preservation of the status quo that the applicants have not been living in the property for a period of some eight months and that the arrangements for sale by auction are imminent (see para [107] of the *McAteer* case (supra)).

(ix) In summary, I do not consider that it is just and convenient, or just and equitable, to grant the relief sought in all of the circumstances of the application.

[34] Had it been necessary, I would have had little hesitation in concluding, on the balance of probabilities, that the applicants were responsible for the damage to the property referred to at para [8] above. I also consider there to be a strong prima facie case that they have advanced submissions to the court which were at least recklessly misleading (see para [11] above). These are factors which may be relevant to the exercise of the court's discretion and/or the question of whether the applicants came to the court with clean hands. In my judgment, they would be capable, in conjunction with the other factors mentioned above, of bolstering the case for denying the applicants equitable relief. In the event, I have not relied on either of those matters in reaching my conclusion; but they were of sufficient concern to the court to warrant mention in this ruling.

[35] For reasons set out above, the application for an interlocutory injunction is refused. I will hear the parties on the issue of costs.