

Neutral Citation No: [2026] NICH 14

Ref: GIL13009

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

ICOS No: 25/10716160

Delivered: 13/03/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

DAVID WOODROW GRAHAM  
and  
MARGARET GRAHAM

Plaintiffs

v

NORTHERN BANK LIMITED T/A DANSKE BANK  
and  
JAMES NEILL & JOHN DONALDSON AS JOINT FIXED CHARGE RECEIVERS  
Defendants

Michael Wilson (instructed by RJW Law Solicitors) for the Plaintiffs  
Robert McCausland (instructed by A&L Goodbody Solicitors) for the Defendants

HHJ GILPIN (*sitting as judge of the High Court*)

*Introduction*

[1] The plaintiffs, who were partners in a farming business, seek an interim injunction to prohibit the defendants from selling part of their farmlands, until the trial of the action.

[2] The precise term of the interim injunction sought is:

“An injunction restraining the defendant[s] from completing the sale of the subject land situate at Raleagh Road, Crossgar, County Down.”

### *History of the proceedings*

[3] On 19 December 2025, the plaintiffs issued a Writ of Summons against the defendants seeking inter alia:

- (i) Damages for losses sustained by the defendants' alleged "failure to obtain the best price reasonably obtainable for the sale of" agricultural lands
- (ii) An injunction to restrain the defendants from completing the sale of the agricultural lands

[4] In addition, on 19 December 2025, the plaintiffs sought emergency injunctive relief on an ex-parte basis to prohibit the sale of the lands until the trial of action. The injunctive relief was granted by Scofield J with a return date fixed for 22 December 2025.

[5] On 22 December 2025, Scofield J extended the interim injunction until it could be heard in full. In addition, he gave directions in respect of the hearing. Thereafter, various affidavits were filed on behalf of both the plaintiffs and the defendants.

[6] On behalf of the plaintiffs there were two affidavits from their solicitor Declan Rodgers being affidavits sworn on 19 December 2025 and 16 January 2026. In addition, the second-named plaintiff, Margaret Graham, swore an affidavit on 23 February 2026. The first named plaintiff, David Graham, has not filed an affidavit.

[7] On behalf of the defendants there were also three affidavits filed namely two sworn by Mairead Daly dated 9 and 25 January 2026 and a further one from John Donaldson sworn on 25 January 2026.

[8] Counsel for the parties furnished focused written skeleton arguments and augmented these with helpful oral submissions for which the court is grateful.

### *Background*

[9] The following facts appear from the affidavit evidence.

[10] The plaintiffs are a married couple who carried on business in a dairy farming partnership for many years.

[11] Their farmlands are situate in or around the Raleagh Road area of Crossgar, County Down. The farmlands consist of the lands the subject of these proceedings and other lands. The farmhouse where the plaintiffs live is at 48 Raleagh Road.

[12] The lands which are the subject of these proceedings have been owned by the first named plaintiff, in his sole name for many years. These lands, all on the Raleagh Road, are registered lands held in Folios 43913, 43049, 18739 and Part A of Folio 18737 all of County Down ("the subject lands"). The subject lands extend to some 44.71 acres.

[13] The plaintiffs' farming business encountered financial difficulties and on 4 March 2016 the first-named plaintiff was adjudicated bankrupt. A Trustee in Bankruptcy was appointed in respect of his estate.

[14] By operation of law the making of the Bankruptcy Order dissolved the farming partnership carried on by the plaintiffs.

### *The plaintiffs indebtedness to the Bank*

[15] In the course of their farming partnership the plaintiffs borrowed monies from the first named defendant, Northern Bank Ltd t/a Danske Bank ("the Bank").

[16] In order to provide the Bank with security in respect of monies lent on 17 May 2001 the plaintiffs charged the subject lands in favour of the Bank by way of a legal mortgage ("the Charge"). The Charge also covered additional lands being lands in Folios 8065, 11040, 11046, 11047, 11057 and 18737, County Down.

[17] At the date of the first-named plaintiff's bankruptcy in March 2016, the plaintiffs were indebted to the Bank. This arose by way of three facility agreements namely:

- (i) A 25-year term loan of £225,000 dated 17 August 2006
- (ii) A 25-year term loan of £200,000 dated 3 November 2008 and
- (iii) An overdraft facility with a limit of £60,000 dated 15 July 2010

[18] The plaintiffs also owned further lands which were not charged to the Bank being those contained in Folio DN95328 consisting of two infill sites and garages located at 12-22 Raleagh Road, Crossgar.

[19] In respect of the monies advanced by the facility agreements these were repayable on demand and/or have been in default since 30 September 2010.

[20] Following the bankruptcy of the first named plaintiff, the plaintiffs made proposals to their various creditors and sought to enter interlocking Individual Voluntary Arrangements as provided for in The Insolvency (NI) Order 1989. Their proposals were initially rejected by their creditors at a Creditors Meeting on 15 July

2016. As a secured creditor the Bank were not bound by the terms of the Individual Voluntary Arrangements.

[21] What was being proposed at that stage was that assets would be realized over a three-year period with both the secured and unsecured creditors being paid in full.

[22] On 25 November 2016, the unsecured creditors agreed to revised proposals which would again see both the secured and unsecured creditors paid in full but now over a shorter duration of two years.

[23] In relation to the subject lands the plaintiffs' proposals were that these be sold by them and the sale proceeds used firstly to discharge their indebtedness to the Bank.

[24] As a result of events that have occurred since the plaintiffs entered their Individual Voluntary Arrangements, neither the Bank nor the unsecured creditors have been paid as the Arrangements envisaged. This arises largely because the plaintiffs have not secured planning permission in respect of the lands that were to be sold.

[25] On 15 December 2023, representatives of the Bank met with the plaintiffs and the Supervisor of their Individual Voluntary Arrangements, Melanie Giles, a Licensed Insolvency Practitioner. The representatives of the Bank expressed disquiet in relation to the progress made towards satisfying the debt owed to the Bank.

[26] On 16 October 2024, the Bank issued formal demands for repayment of the monies lent by way of the Facility agreements.

[27] The plaintiffs failed to satisfy these demands and, accordingly, on 25 October 2024 the Bank served notice on them of its intention to appoint Fixed Charge receivers over the subject lands pursuant clause 6(2) in the Charge.

[28] On 31 October 2024, the Bank, in accordance with clause 6(2) of the Charge executed a Deed of Appointment of receivers appointing James Neill and John Donaldson both of KPMG as Fixed Charge receivers ("the receivers") over the subject lands.

[29] The receivers had all the statutory powers provided for in the Conveyancing and Law of Property Act 1881. Additionally, they had powers set out in the Charge including a power at Clause 6(3)(ii) to:

"... sell the property in such manner and generally upon such terms and conditions as he thinks fit and to convey the same in the name and on behalf of the Mortgagor or the Mortgagor's successors in title."

[30] As at 6 January 2026, the plaintiffs owed the Bank £436,171.68.

### *Marketing of the subject lands*

[31] After appointment, the receivers entered discussions with the plaintiffs. During these discussions the receivers informed the plaintiffs they intended to proceed to market the subject lands for sale.

[32] On 29 November 2024, the receivers appointed Tim Martin & Co, a local estate agent firm to market the subject lands for sale. The agents produced an agent's brochure in which they stated the "Guide Price" for the subject lands as being £500,000.00.

[33] On 20 December 2024, the day the marketing of the subject lands went 'live,' a representative of the receivers spoke to the second-named plaintiff and asked if vacant possession of the subject lands would be provided to a purchaser, as there were sheep grazing on them. In response, according to an attendance note made of the conversation by the receivers, the second-named plaintiff indicated she did not wish the lands to be sold and did not confirm vacant possession would be provided.

[34] In 2025, discussions between the receivers and the plaintiffs or their representatives continued. At one stage the plaintiffs invited the receivers to pause marketing the subject lands. While this invitation was declined the receivers indicated they would consider any proposal the plaintiffs wished to make. In the end the only proposal made by the plaintiffs was a repetition of the proposals in the Individual Voluntary Arrangements. This was not acceptable to the Bank.

[35] On 15 February 2025, as part of the marketing campaign the subject lands were advertised in the Farming Life section of the News Letter.

[36] On 1 April 2025, there having been limited interest expressed in purchasing the subject lands, Savills, an international firm of estate agents, were appointed alongside Tim Martin & Co on a joint agency basis with a view to extending the pool of potential purchasers.

[37] The subject lands were also listed on a variety of online real estate websites. In total some 10,807 views were made of the subject lands on these sites. The joint agents also engaged in direct email and direct postal marketing to those they considered might be potential buyers.

[38] With limited interest having been expressed in the subject lands the receivers set a deadline of 6 June 2025 for offers to be received. By the deadline only one offer of £250,000.00 was received. This offer was subject to contract, finance and vacant possession. The offer being unacceptable to the Bank was rejected.

[39] On 23 July 2025 the asking price for the subject lands was reduced to £350,000.00.

[40] This reduction in the asking price did generate some interest in the subject lands:

- Party A offered £280,000.00 but later withdrew that offer.
- Party B offered £325,000.00 subject to finance and vacant possession. They later reduced their offer to £305,000.00 when vacant possession could not be guaranteed but subsequently increased it to £312,500.00.
- Party C offered £330,000.00 subject to inspection and vacant possession. When informed the sale was on a 'sold as seen' basis they withdrew the offer.
- Party D made a cash offer of £310,000.00 not conditional on vacant possession which was increased to £315,000.00 when Party B made their increased offer of £312,500.00

[41] In relation to Party D's increased offer of £315,000.00 Tim Martin & Co wrote to the Bank on 9 December 2025 opining:

"On the basis that the lands have been on the market a year with very limited interest, in our opinion the offer represents a fair market value..."

[42] The Bank accepted the advice of Tim Martin & Co. Savills also recommended acceptance of Party D's offer. On 17 December 2025 the Bank agreed the sale of the subject lands to Party D, at a price of £315,000.00 subject to contract.

[43] When the plaintiffs became aware the subject lands had been agreed for sale, they obtained their own valuation of the subject lands from Ciaran Fitzpatrick of Fitzpatrick Chartered Surveyors and Registered Valuers. He provided a report, dated 18 December 2025 on a "desktop" basis. In this report he valued the subject lands at £447,100.00.

[44] In the report Mr Fitzpatrick expressed a view as to what would constitute risks of the subject lands being sold at an undervalue. He said these risks included a sale "without full market exposure, competitive bidding, or adequate marketing duration."

[45] On 19 December 2025, the plaintiffs issued proceedings before this court and obtained the temporary injunction prohibiting the Bank selling the subject lands as

the plaintiffs alleged the Bank had, inter alia, failed “to obtain the best price reasonably obtainable for the sale” of the subject lands.

*Legal principles in relation to the grant of an interim injunction*

[46] The power of the court to grant the prohibitory interim injunction sought is found in section 91 of the Judicature (NI) Act 1978 and O29R1 of the Rules of the Court of Judicature (NI) 1980.

[47] Section 91 of the Judicature (NI) Act 1978 provides that an injunction may be granted:

“...where it appears to the court to be just and convenient to do so for the purposes of any proceedings before it...”

[48] Accordingly, the grant of injunctive relief is at the discretion of the court. However, in the House of Lords case of *American Cyanamid Company v Ethicon Limited* [1975] AC 396 Lord Diplock, set out a sequential approach which a court should follow in its consideration of whether to grant an interim injunction.

[49] There are several helpful judgments in this jurisdiction which analyse Lord Diplock’s speech in *American Cyanamid*, notably that of Deeny J in *McLaughlin & Harvey Limited v Department of Finance & Personnel* [2008] NIQB 22 and more recently McBride J in *MBCC Foods (Ireland) Limited v Lesley Bloomfield Limited* [2025] NIKB 40. These cases demonstrate the court’s discretion whether to grant an interim injunction while guided by legal principles and established authority is not confined by rigid criteria. The process is not a rote application of the American Cyanamid framework; rather, the outcome turns on the unique facts and context presented in each case.

[50] The sequential approach set out in the speech of Lord Diplock in *American Cyanamid* requires a consideration of:

- (i) Whether the plaintiff has shown there is a serious issue to be tried?
- (ii) Whether damages are an adequate remedy for the plaintiff and can the defendant pay them?
- (iii) Whether, if damages are not an adequate remedy for the plaintiff, will the defendant be adequately compensated by the plaintiff undertaking to pay damages and can the plaintiff pay them?
- (iv) Where does the balance of convenience lie?

- (v) If the balance of convenience is finely balanced the court should endeavour to preserve the status quo.
- (vi) Are there special features which exist in the case?

*Have the plaintiffs shown there is a serious issue to be tried?*

[51] On behalf of the plaintiffs, Mr Wilson submitted there is a serious issue to be tried namely that the defendants failed in their fiduciary duties to the plaintiffs as the agreed sale price of £315,000.00 is a sale at a significant undervalue and in agreeing the sale the defendants have not acted in good faith.

[52] The plaintiffs' rely on the fact that the defendants significantly reduced the asking price for the subject lands from £500,000.00 to £350,000.00; they did not seek their views in relation to such a reduction; they have been reticent at providing details of offers made; they had not informed the plaintiffs about the offer Party C made of £330,000.00 (though Mr Wilson conceded if the plaintiffs had been told they would have rejected it); they were fixated in disposing of the subject lands at any price even where the debt owing to the Bank would not be paid in full; and they had agreed the sale at a price significantly less than Mr Fitzpatrick's valuation.

[53] In relation to a lack of good faith, the plaintiffs' concerns are that the offer made by Party C to purchase the lands at £330,000.00 subject to inspection and vacant possession had not been communicated to them.

[54] On behalf of the defendants, Mr McCausland submitted that there were no triable issues in this case. He submitted the defendants had throughout the sale process acted in good faith having taken appropriate steps to achieve the best price for the subject lands. Mr McCausland submitted that the plaintiffs' expert Mr Fitzpatrick had correctly identified the three key things that needed to be done to avoid a sale at an undervalue. Firstly, there should be "full market exposure." Mr McCausland submitted that given the extensive professional marketing that had been undertaken, the defendants had satisfied this need. Secondly, in relation to there being "competitive bidding," he noted the various bids set out above that had been made to purchase the subject lands. Finally, in relation to the requirement there be "adequate marketing duration," he submitted that the twelve months the subject lands had been on the market more than satisfied this.

[55] In *Cuckmere Brick Company Limited & another v Mutual Finance Ltd* [1971] 2 WLR 1207, the Court of Appeal set out the duty a mortgagee owes when the power of sale is exercised namely he owes a duty to the mortgagor to act in good faith and take reasonable care to obtain the true market value.

[56] In *Downsview Nominees Ltd & another v First City Corporation Ltd & another* [1993] AC 295 at 82C the Privy Council, in approving what was said in *Cuckmere*, said it:

“... is Court of Appeal authority for the proposition that, if the mortgagee decides to sell, he must take reasonable care to obtain a proper price.”

[57] In *O’Kane & another v Rooney* [2013] NIQB 114, at para [8] Deeny J expressed this duty in this way:

“So it is taken as read and is clear law that a mortgagee ... must be under a duty to act in good faith and honestly as well as having a duty to obtain the true market value of the property.”

[58] In *Silven Properties Limited & another v Royal Bank of Scotland plc & others* [2004] 1 WLR 997, a bank acting by their appointed receivers, sold various properties. The borrowers brought proceedings against both the bank and the receivers alleging they had acted in breach of duty by having sold the properties at an undervalue.

[59] In relation to the duties receivers owe to borrowers the Court of Appeal in *Silven* said at para [22]:

“... in the exercise of the power of sale receivers owe the same equitable duty to the mortgagor and others interested in the equity of redemption as is owed by the mortgagee...”

[60] At para 14, the court said of the lender in respect of the power of sale:

“A mortgagee “is not a trustee of the power of sale for the mortgagor.” This time-honoured expression can be traced back at least as far as Sir George Jessel MR in *Nash v Eads* (1880) 25 SJ 95. In default of provision to the contrary in the mortgage, the power is conferred upon the mortgagee by way of bargain by the mortgagor for his own benefit and he has an unfettered discretion to sell when he likes to achieve repayment of the debt which he is owed: see *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949, 969g. A mortgagee is at all times free to consult his own interests alone whether and when to exercise his power of sale. The most recent authoritative restatement of this principle is to be found in *Raja v Austin Gray* [2003] 1 EGLR 91, 96, para 59, per Peter Gibson LJ.

The mortgagee's decision is not constrained by reason of the fact that the exercise or non-exercise of the power will occasion loss or damage to the mortgagor: see *China and South Sea Bank Ltd v Tan Soon Gin (alias George Tan)* [1990] 1 AC 536. It does not matter that the time may be unpropitious and that by waiting a higher price could be obtained: he is not bound to postpone in the hope of obtaining a better price: see *Tse Kwong Lam v Wong Chit Sen* [1983] 1 WLR 1349, 1355 b."

[61] Thus, when a mortgagee chooses to exercise a power of sale both he and any receivers appointed are under a duty to act in good faith and to obtain the true market value of the property even when in so acting loss is occasioned to the borrower.

### *Consideration of true market value*

[62] In relation to whether there is a serious issue to be tried, the plaintiffs must satisfy the court there is a triable issue, namely that the defendants owed them a fiduciary duty to obtain, in good faith, the best price reasonably obtainable for the subject lands but failed to do so.

[63] In the instant case, the Bank exercised its contractual power of sale and appointed the receivers. The receivers engaged two reputable estate agencies who undertook extensive marketing over many months. During that period, various expressions of interest and offers were both received and withdrawn. The asking price was adjusted in response to market conditions, and after a year on the market the agents advised that the strongest available offer should be accepted. The Bank followed that professional advice.

[64] On the basis of the evidence before the court, I am satisfied there is no triable issue the defendants have breached their fiduciary duties to the plaintiffs to obtain the true market price.

### *Consideration of good faith*

[65] I also find there is no merit in the submission made by the plaintiffs that there has been an absence of good faith. The plaintiffs' concern in this regard is that the defendants did not inform them of the offer Party C had made of £330,000.00 subject to inspection and vacant possession. As stated in *Silven*, a mortgagee enjoys an unfettered discretion as to the timing and manner of any sale undertaken for the purpose of securing repayment of the debt owed. In exercising that power of sale, the mortgagee is entitled to have sole regard to his own interests and is under no obligation to postpone a sale or otherwise act to promote the interests of the mortgagor. In any event the plaintiffs' attitude was clear. An attendance note of the

receivers dated 20 December 2024 records that when the lands were first marketed a representative of the receivers had spoken to the second-named plaintiff and asked her whether she would be willing to provide vacant possession of the lands to a third-party purchaser. Rather than confirming vacant possession would be provided the second-named plaintiff indicated she did not wish the lands to be sold. Furthermore, when I asked Mr Wilson if his clients would have been agreeable to the Bank accepting the offer made by Party C if they had known of it he candidly indicated they would not.

[66] I am satisfied there is no triable issue that the defendants did not act in good faith in respect of the sale of the subject lands and, accordingly, I do not consider there is a serious issue to be tried.

### *Damages*

[67] While I am not satisfied that there is a serious question to be tried, in the event I am not correct in that conclusion I will address the issue as to the adequacy of damages. As noted above the issue is twofold.

[68] The first stage involves a consideration as to whether damages would be an adequate remedy for the plaintiffs if I refused to grant an interim injunction but at trial the plaintiffs persuade the court the lands were sold at an undervalue.

[69] In “Injunctions in Private Law” at para 2.22 Capper opines:

“The adequacy of damages test is in harmony with the fundamental principle ... that injunctions are not to be awarded where damages would be an adequate remedy for the claimant.”

[70] In this case if the lands are now sold at £315,000.00 but at trial it is later held they should have been sold for a higher price the difference between the two figures can be calculated and an award of damages made to compensate the plaintiffs (in reality their creditors). This is not a case where the plaintiffs are seeking to argue the subject lands should not be sold. Indeed, in their interlocking Individual Voluntary Arrangements, which they proposed to their creditors, the plaintiffs themselves committed to the subject lands being sold. I am satisfied that damages would be an adequate remedy if I refuse to grant an interim injunction.

[71] In the event I am wrong about this and damages are determined not to be an adequate remedy for the plaintiffs I turn to the next consideration namely, whether damages would be an adequate remedy for the defendants if an interim injunction is granted but the defendants succeed at trial. In this scenario the court will have determined the agreed sale price of £315,000.00 did not represent an undervalue but if the grant of the interim injunction, at the plaintiffs behest, has caused loss to the

defendants in such circumstances this court must consider whether an award of damages will be an adequate remedy for the defendants.

[72] The plaintiffs are insolvent. In 2016, they entered interlocking individual voluntary arrangements under the provisions of the Insolvency (NI) Order 1989 with their creditors. The 10<sup>th</sup> anniversary of these arrangements being agreed has almost been reached and despite the considerable time that has passed they remain to be completed. These insolvent plaintiffs have no available assets to satisfy any adverse award of damages that might be made in the defendants favour. I find that although damages would be an adequate remedy for the defendants, the plaintiffs would be unable to pay them. For this reason an injunction should not be granted.

### *Balance of convenience*

[73] In the event I am wrong in relation to whether there is a serious issue to be tried and regarding the adequacy of damages the question of the balance of convenience arises.

[74] Capper in “Injunctions in Private Law” at para 2.31 states:

“Weighing the balance of convenience is essentially an enquiry as to which party seems likely to suffer the greater damage if it wins the trial but the interim injunction stage goes against it, and the relative extent to which damages would be sufficient compensation for this.”

[75] If an injunction is granted the prejudice suffered by the defendants is that the plaintiffs’ long standing and substantial indebtedness is not paid and will increase as interest will accrue until the date of payment.

[76] If an injunction is not granted the prejudice suffered by the plaintiffs is that they are denied the opportunity to attempt to have the lands sold at a future date at an increased price and thus reduce further, or perhaps extinguish, their indebtedness to the Bank.

[77] I consider the balance is tipped in favour of the defendants in that they have waited for many years to have the debt owing to them paid, whether in part or in full; they have afforded the plaintiffs’ considerable opportunity to have the lands sold but they have failed to do so; they have engaged in an extensive professional marketing exercise of the lands before concluding the sale to a third party who is willing to buy them; there is no likelihood of the plaintiffs paying damages and no evidence the subject land will be sold at a greater price, the report of Fitzpatrick being only a “desktop” valuation.

### *Status quo and special circumstances*

[78] In *American Cyanamid* at page 408G, Lord Diplock said:

“Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.”

[79] However, in the instant case, for the reasons outlined above, I do not find the factors considered to be evenly balanced.

[80] Lord Diplock went on to say at page 409C:

“... in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.”

[81] However, in the instant case I do not find there are any special factors that this court needs now to take into consideration.

### *Conclusion*

[82] Having regard to all the circumstances and facts of this case I am not satisfied it is just and convenient to grant the relief sought.

[83] I, therefore, dismiss the plaintiffs’ application for an interim injunction pending trial and discharge the interim injunction presently in force.

[84] I will hear the parties in respect of costs.