

**Neutral Citation: [2015] NICH 21**

Ref: **OHA9598**

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

Delivered: **31/03/2015**

**2009/64514**

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

**CHANCERY DIVISION**

**BETWEEN:**

**AIB GROUP (UK) PLC, JOHN DEE ANDERSON  
and WILLIAM KENNEDY**

**Plaintiffs;**

**and**

**EDWARD THOMAS STEPHEN BOYES**

**Defendant.**

**O'HARA J**

[1] In this action the plaintiffs seek an order for possession of approximately 100 acres of land at Magheraberry County Antrim comprised in Folios AN67284 and AN63355. The claim is based on the fact that on 29 April 2005 a charge was made on this land in favour of the first plaintiff ("the Bank"). The charge conferred proprietary security rights on the Bank and provided that it is immediately enforceable and that the Bank is entitled to appoint a receiver at any time after demand. The Bank demanded payment from the defendant on 8 April 2009. No payment has been made by the defendant to date. On 14 December 2011 the Bank appointed the second and third plaintiffs as receivers. Their powers include the power to enter upon and take possession of the land.

[2] The Bank, but only the Bank, also seeks an order for possession of land comprised in Folio AN27415 at Glenavy County Antrim which includes 11 acres and 3 workshops. This land is the subject of a charge dated 3 August 2006 in the Bank's favour. The defendant was called upon to repay the secured loan to 8 April 2009. He has not done so. In this instance the Bank has not appointed receivers and is suing in its own right.

[3] The defendant who has represented himself did not appear at first to dispute the entitlement of the plaintiffs to sell the lands though it was not entirely clear that he still maintained that position as the hearing went on. In any event the facts are that the defendant is indebted to the Bank for a figure in excess of £1.15M. He has been given many years and opportunities to reduce or clear that debt but has failed

to do so. As Mr William Gowdy who appeared for the plaintiffs correctly contended, the Bank is not required to wait indefinitely for the defendant to enjoy a turnaround in his fortunes. It is the position of the plaintiffs that they are entitled to possession of the lands and that in respect of the land at Magheraberry the defendant should be removed from it so that they can sell the land there and achieve a reduction in the debt owed by the defendant.

[4] The hearing and the defendant's resistance to the applications made by the plaintiffs focussed on the Magheraberry land rather than the Glenavy land. It appears that the defendant's main objections and contentions are as follows:

- (i) The proposal/intention of the plaintiffs to enter into an agreement with a renewable energy company, Lightsource Renewable Energy Limited, is a poor deal which is too uncertain and which represents too small a return for the land. Since the Bank and the receivers are obliged to protect the defendant's interest as well as those of the Bank, they should not be given possession in order to complete this deal.
- (ii) The defendant has presented an alternative proposal which would involve leasing the land to another renewable energy company (Livos) which might over time lead to a greater return.
- (iii) The plaintiffs have grossly underplayed their hand by failing to appreciate that the Prison Service requires some of the Magheraberry land in order to provide an alternative access to HMP Magheraberry. The defendant contends that his land at Magheraberry is absolutely essential to the prison and is therefore of significantly greater value than is acknowledged by the plaintiffs.
- (iv) The defendant's further belief or suspicion is that there is in fact some form of underhand agreement or understanding that if he is disposed of through the present action an arrangement will then be reached with the Prison Service which he will be denied the benefit of.
- (v) The defendant asserts that if the plaintiffs delay before reaching any agreement with Lightsource or anyone else the lands at Magheraberry may be re-designated under a revised Belfast Metropolitan Area Plan for commercial use. In that event their value would increase substantially.
- (vi) The defendant contends that he has the prospect of undoing or challenging the vesting of land in or about 1998 at Magheraberry. In connection with this he has raised an issue about his payment in 1998 of £1.4M for surplus lands through his then solicitors.

- (vii) The defendant contends that the receivers should be removed and should not be allowed to be involved in these proceedings as plaintiffs because of what he suggests are irregularities in their appointment.

[5] I do not accept that there is any substance to these or any of the defendant's arguments. I accept that the defendant is indebted to the Bank, that he has been for many years and that he has been given considerable leeway to manage and reduce this debt. The law does not require the Bank or the receivers to wait indefinitely before dealing with the land which is the subject of the charges and thereby reducing the money owed to the Bank. In so far as the defendant contends that a better price or deal might be struck for the Magheraberry lands, his resistance to the order for possession must fail. It is not for this court to analyse the prospects of a re-designation of land as commercial or whether the Lightsource option is inferior to the defendant's alternative (though there is clear reason to think that it is not). Furthermore on the evidence the Prison Service has been directly contacted and has expressed no interest in the lands at Magheraberry. If the defendant contends as he does that the receivers or the Bank have caused him or may cause him additional loss by any fraudulent or negligent action by underselling the lands he can consider whether to sue for that but he cannot resist the application for possession of all of the lands identified at paragraphs 1 and 2 above.

[6] In addition to the application for possession the plaintiffs seek an injunction restraining the defendant from entering onto the Magheraberry land or taking any steps to interfere with the sale of the land there. This application is made on the basis that the defendant has already behaved inappropriately when the land has been visited on behalf of the receivers and in connection with the proposed sale to Lightsource. This has occurred on a number of occasions but especially on 16 October 2012 and 12 May 2014 as evidenced in the affidavits sworn by Mr Green of Lightsource and Mr O'Hare of the Bank. On the second occasion matters became particularly tense and the police were called. It appears that they were unwilling to become involved because they regarded the issue as a civil one and there had been no breach of the peace. On the evidence the defendant does not require access to or use of the Magheraberry land - he owns other land in the locality and has presented no basis for needing to use the land which is the subject of the charge while negotiations continue on behalf of the plaintiffs for its disposal.

[7] In the circumstances I am satisfied that granting the injunction sought by the plaintiffs on the Magheraberry land is entirely just and convenient. Accordingly I make the order sought by the plaintiffs in their Summons dated 16 June 2009 and the Notice of Motion dated 25 June 2014.

[8] After the date of the delivery of this judgement had been notified to the parties I received yet another letter from the defendant. In that letter, the latest of many, he reiterated his points which I have summarised above and he added further assertions and allegations. For instance he stated that he had issued a writ against

Lightsource on 13 March 2015 for £8m and that he was “in discussions with two highly regarded companies regarding an E. F. W. facility of £20m on part of the lands in question.” If he has any new **and realistic** proposals for development of the land he should raise them with the plaintiffs, not me. The plaintiffs would obviously be interested in them, assuming they were in fact realistic and achieved a better return on the property. They do not however amount to a reason for refusing the orders sought by the plaintiffs. Nor do I regard his latest concerns or suggestions about collusion between the parties and others or conflicts of interest as good reason to depart from my decision. In this case the law is clear and entirely against the defendant as a result of his failure over many years to discharge his debts to the Bank.