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Ex tempore Judgment: approved by the Court for handing down

*(subject to editorial corrections)**

Delivered:	**24/03/2014**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DVISION

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ACCORD MORTGAGES LIMITED

-v-

WILLIAM JOHN WILSON
and
MARGARET BRIDGET WILSON

_____

DEENY J

[1] On 5 January 2012 Accord Mortgages Limited issued an originating summons in the High Court of Justice in Northern Ireland relating to delivery of premises at an address in New Buildings in the County of Londonderry by the defendants William John Wilson and Margaret Bridget Wilson to the plaintiff. The plaintiff had a mortgage over the property and the defendants have fallen into arrears. Out of an abundance of caution I will go through the history of this matter in a moment, but it is before me today for substantive hearing on their appeal from the Master's order for possession made as long ago as 30 April 2012.

[2] An unusual application is made by the defendants. The defendant John Wilson wrote on 20 March to a court official at the Chancery Office saying: "I write to advise the court that due to the circumstances which I have outlined below, neither myself or my wife will be able to attend the hearing on Monday 24 March 2014. Currently my wife and I are Out of State, both physically and mentally. As I indicated to the court at a previous review these proceedings have taken a heavy toll on both of us, especially my wife." (His underlining). Out of respect for their privacy I will not go into detail, but it is necessary to say that the matter has become stressful to them and given rise to difficulties. Mr Wilson concludes by saying that his recent focus has been to travel and spend time with his wife so that they can put unfortunate circumstances behind them. He goes on: "This being the case we require that the

court grant an adjournment, to allow time to attend to these difficult issues first." I think it is necessary to say that the difficult issues are of a matrimonial nature.

[3] The court indicated that it was not minded to grant the application on the basis of this letter and a further letter dated 23 March, which was actually Sunday, presumably received or sent by e-mail was received by the court and seen by me this morning. There is a criticism of the plaintiff's solicitors which seems to me wholly misplaced. There is the repetition that both he and his wife are both "OUT OF STATE" at this time and unable to represent their interests in this very serious of matters.

[4] The penultimate paragraph includes the following. "That being the situation I once again, as the Sovereign in this case, require you as my public servant, to facilitate us with an adjournment, for a reasonable period of time, to allow us to sort out our current difficulties first. This case having lasted this long another month or two will have little impact on the respondent Accord Mortgages Limited, therefore I see no need for a final rush to justice at this stage. As neither my wife nor myself will be able to represent our interests in court on Monday 24 March I therefore look to YOU to arbitrate fairly on our behalf." This letter is addressed to me personally I note.

[5] I am treating this as an application to adjourn the matter. I take into account that it is an important matter for the defendant/appellants and I take into account that litigation may well indeed by stressful. But Mr Gowdy of counsel is instructed to oppose the application and he draws attention to a range of matters which are relevant and to which indeed I will add in giving this ruling.

[6] First of all, and it is an important matter, there is no medical report at all supporting this application. If somebody is unwell such medical report is customarily furnished. Sometimes if time is short or in other circumstances the report is only a short one from the General Medical Practitioner, but even that is of assistance in suggesting that somebody is actually ill. It is not appropriate, I consider, save in the most exceptional circumstances to act on the simple assertion by somebody that they are feeling out of state, to use the phrase used by Mr Wilson. I cannot image anybody looking forward to litigation, particularly when they have to conduct it themselves or do conduct it themselves whether by choice or otherwise. But it would be a very harmful step for the efficient administration of justice and would be contrary to the overriding objective set out in Order 1 r 1A of the Rules of Court of Judicature if a party to proceedings could simply write in and say they are feeling 'out of state' and so was their wife, the co-defendant and therefore the court is required to adjourn the matter. So that is a major weakness in the application by Mr and Mrs Wilson. However for the avoidance of doubt, because in the modern age the courts are reluctant to say anything with absolute certainty and the courts are willing to seek when justice requires whether an exceptional step should be taken; with that in mind therefore I want to address the chronology in this case which is strongly against these appellant/respondents.

[7] The proceedings issued on 1 January 2012. The order for possession was made by the Master on 30 April 2012. He granted a stay, there was talk about selling their home, and it is their home, which I take into account. They were given an extension of the stay but that extension of the stay ran out in November 2012 and the Master declined to extend it further. The Wilsons then appealed on 19 November 2012 to this court from the order of the Master as they were entitled to do. The matter came before me by way of review on 6 December 2012. I noted a number of their grounds which included references to the securitisation of mortgages and the alleged need for "a wet mark" on the documents and misplaced criticism of the plaintiff's solicitors' advocate. They were at that stage paying £400 a month on foot of their mortgage with a further £50 a month to try and address the arrears that had already arisen, but as Ms Johnston pointed out on that occasion that was half the sum that they were due to pay. The court nevertheless allowed them time to put in a further affidavit in case their personal circumstances were relevant. The matter was listed for hearing on 11 April 2013. On 20 March 2013 Mr Justice Burgess on application took the case out of the list. The matter was back before him on 11 April and further directions were given. The matter came before me on 19 May 2013 and the appellant/defendants were in default of earlier orders about providing a list of documents. The lender here, the plaintiff, had complied with the recommendations of the court as applied in Swift v McCourt. The arrears had risen and were at that stage at £11,242. In response to an enquiry from the court, the court was told that there were no children at home with Mr and Mrs Wilson who had both taken early retirement from their previous occupations. The court was given considerable detail about possible sale of the premises which was still being attempted. The matter was back before the court on 19 September, the court not having fixed a short hearing in the hope that a sale might be successful. Counsel for the lender informed me that whereas they had been paying as I mentioned before £450 or £460 a month they had only paid £10 in the previous month. The arrears had arisen again to £13,438. The lender was perfectly agreeable to sell the property but it was likely that there was going to be a shortfall in the debt owing.

[8] Again I heard from the Wilsons. Directions were given for skeleton arguments on the matter and for a hearing. Prior to the hearing which was to be on 15 January 2014, the Wilsons came in on 13 January. They complained that the lender's skeleton argument had been delayed, which seemed largely by the Christmas post and only by a week; they had other points to make which the court took into account. With a degree of reluctance I vacated the hearing for 15 January 2014. There had been some modest delay as I have indicated on the part of the plaintiff and they were still seeking further documents which the lender's solicitors were directed to provide. There was still some talk of sales.

[9] Now on that occasion on 15 January the plaintiff was directed to file and lodge a further affidavit within two weeks of 13 January dealing with further points that had been made by the defendants and the plaintiff did so on 24 January. A further list of documents, in part just explaining that where pages were missing they

were actually blank pages, was served. The defendants were then to lodge any further affidavit by 17 February and they were to lodge a skeleton argument by 10 March for the fixed hearing today and they did neither of those things. No further affidavit, no skeleton argument.

[10] The matter comes before the court today on an application to adjourn that is already very frail in nature and it can be seen against this context it would be quite wrong to turn this plaintiff away from the court even for a relatively short period of time for these defendant/appellants. The original order of the court is almost two years old. Despite being given ample opportunity I have not so far been persuaded that there are good grounds to resist the application of the plaintiff, though I will hear the matter substantively now and it seems to me that it would be quite unfair to one party to deny them a hearing. They are already at a loss, the arrears have now risen to £18,033.12. The last payment of £205 was made on 8 January, there was none in February and the property is almost certainly in negative equity and the plaintiff is just trying to mitigate its loss. I believe it is entitled to try to do so and I reject the application to adjourn the matter in all the circumstances.