Neutral Citation No. [2012] NICh 19

Ref: MCCI 8533

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

Delivered: 19/06/12

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISON

BETWEEN:

BANK OF SCOTLAND PLC

Plaintiff:

and

LAURENCE SEAMUS McGUIGAN

Defendant:

McCLOSKEY J

The Plaintiff's Claim

[1] The subject matter of these proceedings is the Defendant's dwelling house at 54 Ballynasaggart Road, Dungannon, County Tyrone ("*the dwelling house*"). By its originating summons issued on 27th September 2010, the Plaintiff seeks the following relief:

(i) Delivery by the Defendant to the Plaintiff of possession of the dwelling house.

(ii) Payment of monies due.

(iii) Further and other relief.

(iv) Costs.

The Plaintiff's claim is founded on a charge dated 2nd August 2007 made between the Defendant (of the one part) and Halifax PLC (of the other) which is said to have formed part of the undertakings subsequently transferred by Halifax PLC to the Plaintiff [hereinafter "*the 2007 charge*"].

[2] The 2007 charge is exhibited to an affidavit sworn by the Plaintiff's solicitor. It is described, in essence, as the mechanism for repayment by the Defendant to the Plaintiff of the principal sum of £315,000, with interest at the rate of 6.09% per annum. The charge contains the following material provisions:

(a) By Clause 3.1, the Defendant covenanted to make monthly payments and to continue doing so until discharge of the debt in full.

(b) Clause 7.1 specified interest on the amount advanced at "*the base rate*", which was defined in Clause 1.1(d).

(c) Clause 7.6 made provision for the possible variation of the rate of interest.

(d) By Clause 17.1, the whole of the debt became due "*immediately*" in the event of the Defendant defaulting in two monthly payments.

(e) By Clause 23, the Plaintiff purported to subject the Defendant to a legal obligation to discharge the Plaintiff's costs of legal proceedings in connection with the charge.

(f) Clause 2.2(a) permitted service of written notice at either the dwelling house or the last address given by the Defendant to the Plaintiff.

(g) By Clause 18.2, the Plaintiff was empowered to sell the dwelling house without having repossessed it and without the restrictions in Section 20 of the Conveyancing Act 1881.

[3] On 7th November 2011, Master Ellison ordered the Defendant to deliver to the Plaintiff possession of the dwelling house within twenty-eight days after service of the order. On 23rd November 2011, the Defendant served a notice (of sorts), the gist of which was to signify an appeal against the Master's order.

<u>Other Evidence</u>

[4] The initiation of proceedings on 28th September 2010 was preceded by a letter dated 20th August 2010 from the Plaintiff's solicitors to the Defendant, requesting repayment of arrears of £5,586.15. This letter was written on behalf of Halifax, described as "*a division of Bank of Scotland PLC*". Subsequently, annexed to the originating summons was a document described as:

> "*Bank of Scotland PLC … abstract of title to the property, rights and liabilities of Halifax PLC …*".

This rehearses a series of events spanning the period June 2006 to September 2007. It records that on 17th September 2007, the undertakings of Halifax PLC (and others) were transferred to the Governor and Company of the Bank of Scotland "*… to the intent that the Bank succeeded to the relevant undertakings as if in all respects the Bank were the same person as the relevant transferor company*". The issue of the Plaintiff's succession to Halifax we also addressed in a further affidavit, which explained that the vesting of the entire undertaking of Halifax PLC in the Plaintiff was effected on 17th September 2007, pursuant to Section 10 of the HBOS Group Reorganisation Act 2006. By virtue of Section 12 of this statute, the charge is now construed as if it were made between the Plaintiff and the Defendant and it is further averred that the Plaintiff is entitled to exercise the rights of Halifax on foot thereof.

[5] On 17th January 2012, the first of four affidavits was filed on behalf of the Defendant, who has represented himself throughout these proceedings. This affidavit, in substance, questioned the Plaintiff's legal entitlement to proceed against the Defendant pursuant to the charge. The affidavit, which was replete with comment and rhetorical questions and was somewhat incoherent in consequence, asserted a "*widespread practice of selling mortgage backed securities*" and suggested that "*hundreds of loans are grouped together and sold to investment banks …*". As the affidavit acknowledged, in terms, any suggestion that this has been the fate of the subject charge is unsubstantiated assertion.

[6] In his second affidavit, the Defendant reiterated this vague assertion. Once again, he challenged the averment in the Plaintiff's affidavit evidence that neither Halifax PLC nor the Plaintiff has at any time divested itself of legal title to the charge or the debt secured thereby. The Defendant's third and fourth affidavits continued to ventilate this theme. In particular, his fourth affidavit contained a claim that he possessed "*irrefutable evidence*" that "*Halifax/Bank of Scotland PLC*" sold their loans by the mechanism of a "*securitisation process*" which was established "*with the knowledge of the regulators and Government*" fraudulently. This affidavit further accused the Plaintiff of immorality, lying, cheating, conning, perjury, coercion and "*asymmetric information*".

[7] I record that, as the appeal progressed, the Defendant brought applications designed to secure discovery of particular documents and cross-examination of unidentified agents of the Plaintiff, which were evidently unyielding. On 31st May 2012, Deeny J ordered the Defendant to serve a supplemental affidavit, to include a List of Documents, on or before 12th June 2012. The Defendant did not comply with this order. Rather, he issued another summons seeking "*discovery of all documents required to prove Bank of Scotland PLC and Arthur Cox Solicitors colluded to bring fraud before the Honourable Court*". The Plaintiff also filed a skeleton argument purporting to deal with the discovery issues. In this further discovery application, the Plaintiff stated, *inter alia:*

> *"It is well known in financial sectors that the securitisation techniques employed by the Plaintiff were and are unlawful and will lead to any alleged contracts being null and void …*
>
> *The Plaintiff is hiding the fact that it has engaged in fraudulent practices… ".*

Consistent with earlier written representations, this document is replete with unparticularised allegations of fraud.

Conclusion

[8] On 19th June 2012, I listed both the substantive appeal and the Plaintiff's latest discovery application for hearing. I treated the latter as an application for specific discovery on oath pursuant to Order 24, Rule 7 of the rules of the Court of Judicature. I conclude that the Plaintiff's discovery application is based on fanciful and flimsy speculation, mixed with bare and unparticularised assertion. Applying the well established principles which govern such applications, I have no hesitation in dismissing it.

[9] In the presentation of the Plaintiff's case to the court, the following additional proofs were received:

(a) The original of the 2007 charge.

(b) The original Land Certificate for Folio TY75435, County Tyrone.

Furthermore, the attention of the court was drawn to a Notice satisfying requirements of Order 88, Rule 4(B) of the Rules of the Court of Judicature. The following figures were either proved in affidavit evidence or represented to the court by counsel for the Plaintiff (Mr. Gowdy) and were not contested by the Defendant:

(a) The arrears due by the Defendant to the Plaintiff on foot of the 2007 charge have now escalated to £21,818.43.

(b) The current balance is £342,915.49.

(c) The present monthly repayment is £1,228.94.

(d) The last payment was made by the Defendant, in the amount of £4,900, on 28th March 2011 (notably – taking into account the "defence" subsequently raised – some six months following the initiation of these proceedings).

The Defendant did not dispute that a default of the type specified in Clause 17.1 of the 2007 charge had occurred.

[10] For the record, on the date when the court disposed finally of this matter, 19th June 2012, the Defendant requested an adjournment. The basis of his request was that he needed to obtain further information from the Plaintiff. Given the history of these proceedings, including the court's dismissal of the Defendant's interlocutory applications, I ruled that this was without merit. While the Defendant indicated that he would attempt to seek further information from the Plaintiff through separate proceedings, I took into account, *inter alia*, the vague and unparticularised nature of this representation, this court's earlier dismissal of a comparable action brought by the Defendant against the Plaintiff, the extensive opportunity which the Defendant has had to adduce all evidence desired to fortify his defence and the over-riding objective. The adjournment application was refused accordingly. The Defendant represented to the court, evasively and unconvincingly, that at all material times he has been the only occupant of the dwelling house. He declined to provide any particulars and, specifically, failed to engage with the Plaintiff's contention that the dwelling house was at the material time not the Plaintiff's place of residence, rather an asset which he rented for profit.

[11] As regards the substantive appeal, the Plaintiff has discharged its burden of establishing on the balance of probabilities that it is entitled to the relief sought in the originating summons. All of the necessary proofs are in order. I find specifically that the Plaintiff has at no time divested itself of the charge. The Plaintiff has proved to the requisite standard that it is the registered owner of the 2007 charge and, further, that this instrument suffers from no legal infirmity. I reject the various wild, speculative and increasingly bizarre claims and assertions made by the Defendant. The order of the Master is affirmed and the appeal is dismissed.