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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* 30/05/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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ON APPEAL FROM AN ORDER OF THE DEPUTY MASTER OF THE HIGH COURT OF NORTHERN IRELAND

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Between

BANK OF SCOTLAND

Plaintiff/Respondent

and

GERARD THOMAS HERRON

Defendant/Appellant

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McBRIDE J

Introduction

[1] This is an appeal against the decision of Deputy Master Killen, dated 23 October 2015 when she ordered that the defendant do within 28 days after personal service upon the defendant of this order deliver to the plaintiff possession of the property situate and known as 9 Viewfort, Dungannon, County Tyrone BT 71 6LP being the lands comprised in Folio TY87396 County Tyrone.

[2] The plaintiff/respondent ("the Bank") was represented by Mr Keith Gibson of counsel. The defendant/appellant ("Mr Herron") was a litigant in person who had the assistance of a McKenzie Friend, Mr O'Tierney.

Background/Chronology of Proceedings

[3] This case has a lengthy history and given the issues which require determination it is necessary to set it out in some detail. I do not however intend to

rehearse details of all the applications made to the court as many of these are not germane to the issues requiring determination in the present appeal.

[4] On 20 June 2007 Birmingham Midshires, a division of Halifax Plc made an offer of mortgage to Mr Herron. The offer was made subject to standard offer of advance conditions ("Mortgage Conditions"). The mortgage offer was an interest only mortgage for a period of 10 years, in the sum of £320,000 in respect of premises at 9 Viewford, Dungannon, Co Tyrone, BT71 6LR ("the Premises") at a fixed rate of interest until 1 July 2009 and thereafter at a variable rate. JP Hagan, Solicitors were appointed to act for both the bank and Mr Herron.

[5] On 28 March 2008 Mr Herron entered into a mortgage deed and his signature was witnessed by a solicitor in John P Hagan, Solicitors. By this mortgage Mr Herron charged the premises to Halifax Plc to secure payment of all monies Mr Herron owed to the bank under the mortgage conditions.

[6] The mortgage deed stated:

> "This mortgage deed incorporates the conditions. The borrower has received a copy of them."

[7] On 27 April 2009 the mortgage was registered in the Land Registry.

[8] On 27 July 2012 the bank issued proceedings pursuant to Order 88 of the Rules of the Supreme Court against Mr Herron seeking possession of the premises and payment of monies due on foot of the charge together with costs.

[9] On 19 March 2013 Mr Herron issued a summons seeking a dismissal of the bank's claim.

[10] On 20 March 2013, upon hearing the solicitor for the bank and Mr Herron not appearing and not being represented, Master Ellison dismissed Mr Herron's application dated 19 March 2013 and made an Order for Possession in favour of the bank.

[11] On 29 March 2013 Mr Herron issued an appeal notice which was listed before Deeny J on 23 April 2013 who remitted the appeal to the Master for further directions.

[12] On 10 June 2013 Master Ellison ordered, inter alia, that the order for possession previously announced be rescinded.

[13] On 14 November 2013 Master Ellison ordered the bank to:

> "File and serve an affidavit by one of its officials in accordance with the procedures described in paragraph

> [7] of the Chancery Judge's judgment in Santander v Carlin averring to the accuracy, or otherwise of Mr Carvill's affidavit filed on 2 July 2013 and containing an up-to-date state of account between the parties … and addressing the standing of the plaintiff to make this claim."

[14] On 23 July 2014 Master Ellison ordered that a further affidavit be filed by the bank to deal with the securitisation history of the charge.

[15] Thereafter, the case was ultimately transferred to Deputy Master Killen and a hearing took place on 26 May, 26 June and 1 September 2015. An order for possession was made in favour of the bank on 23 October 2015.

[16] On 30 October 2015 Mr Herron filed a Notice of Appeal setting out 11 grounds of appeal.

[17] This appeal has taken some time to come to final hearing as there have been a multiplicity of applications by Mr Herron.

Evidence before the court

It was agreed that the appeal would proceed by way of a re-hearing.

Evidence on behalf of the plaintiff

[18] The evidence for the bank comprised the affidavit evidence of –

(a) Mr Carvill, Solicitor, who swore affidavits on 29 October, 2 July 2013 and 27 March 2015.

(b) William Smith, Collection Specialist of the bank, who swore affidavits on 12 December 2013 and 20 March 2014.

(c) Ian Stewart, Head of Secured Mortgages with Lloyds Bank Group (at which Bank of Scotland Plc is a member), who swore an affidavit on 2 October 2014.

(d) Catherine Yates, Solicitor, who swore an affidavit on 9 March 2015.

(e) Amanda Bellis, Collection Specialist with the bank, who swore an affidavit on 26 March 2015.

In addition Mr Stewart gave oral evidence and was cross-examined by Mr Herron.

[19] Mr Carvill averred in the grounding affidavit, which supported the originating summons issued by the bank, that the plaintiff had standing to bring the

claim as Halifax Plc transferred its undertakings to the Governor and Company of the Bank of Scotland on 17 September 2007 and on the same day the Governor and Company of the Bank of Scotland was registered as a public company under the Companies Act 1985, known as the Bank of Scotland Plc. An abstract of title was exhibited which stated that the HBOS Group Re-organisation Act 2006 provided for the transfer of the undertakings, including the business and all property of Halifax Plc to the Governor and Company of the Bank of Scotland on 17 August 2007. He averred that the 2006 Act further provided for the Governor and Company of the Bank of Scotland to be registered as a public company and on that date, in accordance with the provisions of the 2006 Act the undertakings of Halifax Plc were transferred to the Governor and Company of the Bank of Scotland "to the intent that the bank succeeded to the relevant undertaking as if in all respects the bank were the same person as the relevant transfer or company". The bank was then registered as a public company known as Bank of Scotland Plc on 17 September 2007. Mr Carvill averred that this was in accordance with the powers of the mortgagee as under paragraph 13 of the Mortgage Conditions Halifax Plc was permitted to transfer the mortgage without the lender's consent. Further, at paragraph 15.7, the Mortgage Conditions stated:

> "The person to whom the lender transfers the mortgage will be entitled to exercise all the lender's powers in connection with the mortgage."

[20] In the originating summons the bank sought vacant possession of the premises in order to realise its security. Mr Carvill set out the factual basis for such an order, namely that Mr Herron had entered into a mortgage with the bank and under the terms of this agreement he agreed inter alia to repay the monies advanced by the bank and the bank agreed not to take possession or exercise its power of sale unless default was made by Mr Herron paying one or more of the monthly instalments.

[21] Mr Carvill then averred that Mr Herron was in default of payment of the principle and interest payments due on foot of the agreement. As of the date of the affidavit the last payment had been made on 30 December 2011. By letter dated 5 September 2011 the Bank made a demand for payment and also served a Notice to Quit on the same day. The statement of account indicated that the current monthly instalment due was £7019.70. Total arrears as of the date of the affidavit was £11,017.52 and the amount remaining due under the charge as of the date of the affidavit was £328,413.11.

[22] The affidavit confirmed that the property was occupied by the defendant. It further indicated that the charge was not regulated by the Consumer Credit Act 1994 and that a search had been carried out by Land Registry and no charge had been registered pursuant to Article 6 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 or any application lodged under Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

[23] In his second affidavit sworn on 2 July 2015 Mr Carvill accepts that the original affidavit mistakenly stated no matrimonial charge had been registered when in fact a matrimonial charge dated 10 May 2010 was registered against the premises pursuant to Article 5 and 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998. He further states that:

> "Although our office did not have any contact with Mr Herron, Mr Herron did contact our office on 7 September 2011 … our office responded by letter 9 September 2011. The defendant also wrote to me on 11 December 2012 … our office responded on 20 December 2012."

[24] In his third affidavit sworn on 27 March 2015 Mr Carvill confirmed that due to an oversight the arrears balance which was referred to as the July balance was in fact the August balance.

[25] William Smith, Collections Specialist with the bank, filed an affidavit on 12 December 2013 in compliance with the order of Master Ellison dated 14 November 2013 to aver to the accuracy of Mr Carvill's affidavit filed on 2 July 2013, to provide updated statement of account and to address the standing of the bank to make the claim. Mr Smith averred that the plaintiff had standing as the entire undertaking of Halifax Plc vested in the bank pursuant to Section 10 of the HBOS Group Re-organisation Act 2006 and pursuant to Section 12 of this Act, he averred, the charge or mortgage is now construed as if it were made between Mr Herron and the bank and the bank is entitled to exercise the rights of Halifax Plc on foot of the charge. He further confirmed the accuracy of Mr Carvill's affidavit and set out an updated statement of account. He stated that on 18 September 2013 Mr Titchen from the securitisation department informed him that, contrary to the information given to Arthur Cox, Solicitors, and to Mr Herron by letter dated 27 August 2013, the mortgage account had in fact been assigned to Dakota Financing on 16 December 2008 and was returned to the bank on 14 June 2011. He averred that the mortgage account "is currently not securitised".

[26] Ian Stewart, Head of Secured Mortgages with Lloyds Bank, of which the bank is a member, filed an affidavit on 6 October 2014 to explain fully the particulars of the securitisation relating to the plaintiff's charge and to explain when the plaintiff parted with the document specified in a list contained in Mr Herron's affidavit dated 28 April 2014. He averred that according to the bank's electronic records, the mortgage was assigned to Dakota Financing on 16 December 2008 and was re-assigned back to the bank on 14 June 2011. He stated the loan was signed by way of an equitable assignment and legal title remained with the bank at all times during the period Mr Herron's mortgage loan was securitised. His affidavit further deals with the discovery issues.

[27] When Mr Stewart gave oral evidence he adopted his affidavit evidence and explained, by reference to the computerised records, how the mortgage was securitised between 16 December 2008 and 14 June 2011. It was then released by way of a deed of release. He confirmed that in accordance with the mortgage sale agreement the legal title to the mortgage was never assigned to Dakota Financing. When cross-examined by Mr Herron he confirmed that neither the mortgage sale agreement nor the deed of release could be edited and he also stated and showed from the computerised records that by July 2011 Mr Herron's account was no longer flagged as being securitised.

[28] Miss Yates' affidavit provides correspondence verifying the bank's appointment of John P Hagan, Solicitors, in connection with the loan facilities from the plaintiff to the defendant.

[29] Amanda Bellis, Collections Specialist employed by the bank, confirms in an affidavit sworn on 26 March 2015 that the account has never been subject to a recalculation of the contractual monthly instalments so as to provide for the repayment of any arrears and sets out the state of the account as of the date of the affidavit.

Evidence on behalf of Mr Herron

[30] Mr Herron filed affidavits dated 29 March 2013, 19 March 2013, 9 September 2013, 14 November 2013, 31 January 2014, 28 April 2014, 4 June 2014, 24 July 2014, 31 October 2014, 23 January 2015, 3 February 2015, 22 May 2015 and 27 August 2015. A number of further affidavits were filed in relation to other applications including an application for judicial review, an application to join parties as co-defendants and an application for discovery. Mr Herron was called by the Court to answer on oath whether the signature on the mortgage deed was his. In response he said "It looks like my signature". He would not confirm or deny whether it was in fact his actual signature.

[31] After the bank closed its case, Mr Herron sought to file additional affidavit evidence dated 20 March 2017, which raised new points not made at the lower court or in his appeal notice. In the exercise of my discretion I granted the plaintiff leave to file this additional evidence. After the hearing Mr Herron then supplemented his evidence by further correspondence to the bank and the court setting out details of a clerical error made in a Notice of Cancellation he had sent to the bank.

[32] In his various affidavits Mr Herron essentially puts the plaintiff bank on strict proof of its standing to make a claim. He further questions the ability of the various deponents to give affidavit evidence on the basis that they do not have first-hand knowledge of the matters they averred to. Mr Herron then questions the validity of the mortgage on the basis that it does not have a valid signature or seal. He further denies that he was given the mortgage conditions at the time of the mortgage and states he only became aware of these on 29 October 2012. In addition Mr Herron sets

out a number of errors which appear in the affidavits and states that on the basis of these errors the court should not accept the evidence of the plaintiff as it is unreliable and based on misrepresentations. In particular he points to the following errors –

(a) Mr Carvill's averment that Arthur Cox had no contact with Mr Herron even though Mr Carvill subsequently accepts in his affidavit that there was extensive correspondence between the parties.

(b) Mr Carvill's averment that no charges were registered against the property when in fact a charge had been registered pursuant to Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 on 10 May 2016.

(c) Mr Smith's affidavit accepts the bank made a misrepresentation to its own solicitors, Arthur Cox, and also to Mr Herron about securitisation.

(d) Mr Carvill in his third affidavit accepts that he made an error in relation to the arrears balance quoted in the grounding affidavit as he referred to the August balance and incorrectly stated it was the July balance.

(e) Mr Herron avers that the record of payment made on 30 December 2011 is incorrect and does not accord with the computer records provided by the bank.

Generally, Mr Herron denies that he is responsible for the account or the debt and in all these circumstances, he submits the bank is not entitled to an order for possession.

[33] In his affidavit filed on 20 March 2017 Mr Herron submits that the agreement was "a secured credit agreement" as defined by EU Directive 85/577/ECC and in accordance with its provisions he is entitled to and has cancelled the agreement by service of a Notice of Cancellation dated 16 March 2017 on the bank. In the Notice of Cancellation Mr Herron states that he does not have funds to "resolve the inequity" and further states the most he can reasonably afford to pay based on his current income is £200 per calendar month. On 27 March 2017, Mr Herron notified the bank by Certificate of Service of a clerical error in his Notice of Cancellation.

Grounds of Appeal

[34] Mr Herron sets out the following grounds of appeal in his Notice of Appeal:

Ground 1 I am not the responsible party for the account (*details as specified in the Notice of Appeal*).

Ground 2 Being falsely held as liable for alleged debt, when I am not the responsible party in this matter, has caused me irreparable harm.

Ground 3 The plaintiff does not have proper standing to bring the claim.

Ground 4 The claims of the plaintiff are based on misrepresentations or in the alternative negligent misrepresentations.

Ground 5 The charge upon which the plaintiff bases its case is a nullity, founded upon a potentially criminal action by John P Hagan, Solicitors.

Ground 6 The plaintiff's claims are based upon the testimony of an unreliable witness, as is known to this court.

Ground 7 I was denied relevant discovery.

Ground 8 My right to a fair trial was violated.

Ground 9 The plaintiff has not shown that it has incurred a loss as a consequence of my actions or inactions.

Ground 10 Due process has not been followed.

Ground 11 The court showed bias in its treatment of the parties.

Consideration

[35] This is an appeal against an order for possession granted to the bank in respect of the premises. The bank claims that it advanced monies to Mr Herron which were secured by way of a legal charge over the premises. The bank claims that Mr Herron is in default of payments due on foot of the mortgage and in these circumstances he is breach of the mortgage and therefore the bank is entitled to an order for possession.

[36] Mr Herron seeks to defend the bank's claim and to appeal the order of Deputy Master Killen on the grounds set out in his Notice of Appeal.

[37] The grounds of appeal can be summarised under the following three headings:

(a) Procedural irregularities in the Master's Court – Grounds 7, 8, 10 and 11.

(b) Lack of evidence to support the claim – Grounds 1, 2, 4, 5, 6 and 9.

(c) The plaintiff's lack of standing to bring the claim – Ground 3.

[38] In addition to the grounds set out in the Notice of Appeal Mr Herron has now raised an additional ground in his most recent affidavit filed on 20 March 2017

namely that the agreement was a secured credit agreement and in accordance with the EU Directive 85/577/ECC he is entitled to and has cancelled the agreement.

Procedural irregularities in the Master's Court

[39] Mr Herron submits that as a result of lack of due process and bias and denial of relevant discovery his right to a fair trial was violated in the lower court.

[40] This court dealt with the matter by way of a rehearing and as this court will determine the issue 'de novo' it is unnecessary for this court to rule on the conduct of proceedings before the Master.

Lack of evidence to support the bank's claim

[41] Mr Herron submits that the bank has not established to the requisite standard that he is the person responsible for the mortgage account and he denies that he is liable for the alleged debt; he further alleges that the charge is a nullity as it arose due to a potentially criminal act by JP Hagan, Solicitors; he alleges that the plaintiff's claim is based on misrepresentations and the testimony of an unreliable witness and the plaintiff has not proved it has sustained any loss.

[42] The affidavit evidence submitted on behalf of the bank avers that Mr Herron entered into a mortgage deed with the bank on 28 March 2008 whereby he charged the premises in favour of the bank. This deed was signed by Mr Herron and the signature was witnessed by a solicitor.

[43] When Mr Herron gave evidence on oath and was asked by the court whether the signature on the mortgage deed was his he stated "it looks like my signature". When pressed whether it was his signature he became shifty and repeated several times "it looks like my signature". Having observed Mr Herron's demeanour, having compared his signature on the mortgage deed and his signature on his numerous affidavits; taking note of the fact Mr Herron has never in any of his numerous affidavits ever denied entering into the mortgage deed or has ever denied receiving the loan monies and noting his agreement to pay £200 per month in respect of the debt to the bank, I am satisfied that Mr Herron did enter into and did sign the mortgage deed on 28 March 2008. Mr Herron did not pursue at hearing any argument that the mortgage was invalid on the basis it was not under seal. Counsel for the bank therefore did not reply to any such submission. On the basis of all the evidence submitted to the Court I am satisfied that Mr Herron signed the mortgage and the mortgage is a valid agreement and he is therefore the person responsible for the mortgage debt and is subject to the terms of the mortgage.

[44] In these circumstances, the evidence of the attesting solicitor is not required. I find that there is no merit in the submission that because the solicitor was subsequently found guilty of criminal offences in respect of other matters this

renders the mortgage deed in which he witnessed Mr Herron's signature, a nullity. Mr Herron pointed to no authority to support such a proposition.

[45] Mr Herron further submits that the plaintiff's claim is based on misrepresentation and unreliable testimony.

[46] As appears from the affidavits, and in particular the affidavit of Mr Carvill, a number of errors were made. Mr Carvill erroneously stated that no charge had been registered against the premises when in fact a charge had been registered, he further stated that his office had no dealings with Mr Herron when in fact there had been considerable correspondence and he further wrongly inserted the figure in respect of arrears as of the date of the grounding affidavit. In addition Mr Herron points to further misrepresentations made by the bank and in particular Mr Smith's affidavit wherein he confirms that the bank erroneously informed its own solicitors, Arthur Cox and Mr Herron, that the loan had never been securitised when in fact it had been securitised. In addition Mr Herron disputes the amount of the payment recorded to have been made in December 2011. The affidavit states that £372.52 was paid but he submits that the computer records indicated a payment of £1,937.08.

[47] Having considered the entirety of the affidavit evidence presented by the bank and in particular the updated statement of account presented by Mr Smith and Miss Bellis, I am satisfied that Mr Herron is in default of the terms of the mortgage agreement by reason of his default in payment of principal and instalments when due. This view is fortified by Mr Herron's admission in the Notice of Cancellation which he served on the bank that he does not have the funds "to resolve the inequity immediately" but stated he would agree to pay £200 per month which is the most he can reasonably afford based on his current income.

[48] Whilst there may be a dispute as to the actual amount due and owing this court is only concerned with the issue whether the bank is entitled to an order for possession. The court is not being asked to make a monies judgment and is therefore not concerned with the precise amount due to the plaintiff. At a later stage the Master may have to consider this question.

[49] It is noted that there is a charge registered against the premises on foot of the Domestic Violence and Family Homes (Northern Ireland) Order 1998. This charge however was registered on 10 May 2010 and therefore ranks in priority after the bank's charge which was registered in 27 April 2009. In all the circumstances the registration of the later charge does not affect the bank's right to obtain an order for possession.

[50] I am satisfied the errors made in the affidavits were made innocently. I further find that they are not material to the issues to be determined in this case.

[51] I therefore dismiss grounds 1, 2, 4, 5, 6 and 9 of the Notice of Appeal.

Standing of the plaintiff to make the claim

[52] The defendant submits that the plaintiff does not have standing to bring the claim as it is not the party who entered into the mortgage deed. Further, Mr Herron submits that the charge was registered at a time when the bank had sold its rights to Dakota Financing and therefore the registration of the charge was fraudulent and it is therefore void.

[53] The mortgage deed was entered into by Birmingham Midshires which is a Division of Halifax Plc. On 17 September 2007, pursuant to Section 10 of the HBOS Group Re-organisation Act 2006, ("2006 Act") the entire undertaking of Halifax Plc vested in the Governor and Company of the Bank of Scotland. Pursuant to Section 12(13) of the 2006 Act, any security interest held by Halifax Plc vested in the Governor and Company of the Bank of Scotland and was available to it. Further, under Section 12(14)of the 2006 Act,

> "In relation to any security interest transferred to the Bank by or under this Act and any liabilities thereby secured, the Bank shall be entitled to the same rights and priorities … to which the transferor company would have been entitled …"

[54] The Governor and Company of the Bank of Scotland was then registered on 17 September 2007 as Bank of Scotland Plc.

[55] I therefore find that in accordance with the provisions of the 2006 Act all the rights and liabilities under the mortgage deed transferred to the bank on 17 September 2007. The bank did not require Mr Herron's consent to the transfer as paragraph 13.1 of the mortgage conditions provided,

> "The lender may transfer the mortgage without obtaining the borrower's consent…"

Paragraph 13.2 further provides,

> "The person to whom the lender transfers the mortgage will be entitled to exercise all the lenders powers in connection with the mortgage."

I am satisfied these conditions were incorporated into the mortgage agreement and I am therefore satisfied that the bank has standing to bring this claim notwithstanding the fact it was not a party to the original mortgage deed, because the rights arising under it have been legally transferred to the bank by the original mortgagee.

[56] Mr Herron further submitted that the bank did not have standing to bring the claim as the charge had been assigned to Dakota Financing when it was registered and therefore the charge was void.

[57] Mr Stewart gave evidence that the charge was securitised from 16 December 2008 until 14 June 2011 and gave detailed evidence about the nature of the securitisation and explained by reference to the documentation that the loan was assigned by way of an equitable assignment. He stated that legal title remained with the bank at all times. His evidence about the dates of securitisation and the nature of it were supported by reference to the documentation and records of the bank. The charge was registered by the plaintiff in the Land Registry on 27 April 2009.

[58] In Paragon Finance v Pender [2005] 1 WLR 3412, the court had to consider whether the registered owner of a legal charge had a right to an order for possession when it had transferred the beneficial ownership of the legal charge to an SPV. Parker LJ held at paragraph 109 as follows:

> "It is common ground that Paragon, as registered proprietor of the legal charge, retains legal ownership of it. One incident of its legal ownership – 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 title 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 to divest Paragon of an essential incident of its legal ownership. In my judgment as a matter of principle the right to possession conferred where the legal charge remains exercisable by Paragon as the legal owner of the legal charge (ie as a registered proprietor of it) notwithstanding that Paragon may have transferred the beneficial ownership of the legal charge to the SPV."

[59] I accept the evidence of Mr Stewart and I find that the arrangement put in place by the bank to securitise the charge in this case amounted to an equitable assignment only. The plaintiff therefore remained the legal owner of the charge and was therefore entitled to register it in the Land Registry. Registration is conclusive evidence that the bank is the registered owner of the first charge on the premises. I therefore dismiss this ground of appeal.

Cancellation of Agreement

[60] Mr Herron belatedly submitted that he had cancelled the agreement by service of a Notice of Cancellation dated 16 March 2009 on the bank in accordance with the provisions of the EU Directive 87/577/ECC.

[61] I find this submission to be completely devoid of any merit because, firstly, the deed of mortgage does not fall within the scope of the EU Directive, which applies to contracts entered into "away from the trader's premises". This deed was entered into at business premises and therefore Mr Herron cannot avail of the provisions in the Directive. Secondly, it makes no sense in law or commerce that a person can take out a loan and then unilaterally cancel the agreement without repaying the loan. If such a right existed it would wreak havoc with the established patterns of commercial lending and would prevent creditors lending money with consequent disastrous effect on business and commerce.

Conclusion

[62] The evidence in this case is overwhelming that the bank advanced substantial monies to Mr Herron, secured by way of a charge on the premises. Under the mortgage agreement Mr Herron agreed to pay instalments when due and owing. Mr Herron did so until the summer of 2011. Since that time he has defaulted. Although he has made a number of sporadic payments, no payments have been made since August 2014. From that date Mr Herron has lived in the premises effectively rent free. The mortgage is now substantially in arrears. The court was informed on the last day of hearing that the current outstanding balance is £433,000.57. The mortgage term ends in July 2017 and the current estimated value of the premises is £286,000. The total arrears is £64,970. It appears therefore that the premises is now in negative equity.

[63] I am satisfied that the plaintiff bank has standing to bring this claim. I am further satisfied that it is the registered owner of the first charge over the premises. I am further satisfied that the bank has established to the requisite standard that Mr Herron is in default of the mortgage agreement by reason of his failure to pay the instalments of principal and interest when due and owing. As a result of his failure to pay these instalments the bank has sustained a loss. In these circumstances, the bank, in accordance with paragraph 5(2) Part 1, Schedule 7 of the Land Registration Act (Northern Ireland) 1970 is entitled to apply to the court for an order for possession. In accordance with these provisions the court has a discretion to make a possession order. Mr Herron frankly admitted to the court that given his current inability to work full-time he has limited income and he would therefore only be able to make payments of £200 per month towards the debt.

[64] In light of the extent of the default of the mortgage by Mr Herron and his admitted inability to pay the sums due within a reasonable time, the Master was entitled in the exercise of her discretion to make the order for possession in accordance with the powers granted to her under the Land Registration Act paragraph 5(2) Part 1 of Schedule 7.

[65] I accordingly dismiss the appeal. I make no order as to costs on the basis the bank is entitled to add the costs of these proceedings onto the mortgage debt, in accordance with the terms of the mortgage.