Neutral Citation: [2016] NICh 11 | ***Ref:*** **2014/106183**

Judgment: approved by the Court for handing down | ***Delivered:*** **15 April 2016**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

EILEEN BRADLEY
(as personal representative of Susan Brown deceased)

Plaintiff:

and

THE GOVERNOR OF THE BANK OF IRELAND

Defendant:

MASTER HARDSTAFF

[1] Mr Mercer BL of counsel attended by solicitor for the Applicant/Plaintiff Eileen Bradley and Mr Cathal Doran, solicitor of Arthur Cox, solicitors for the Defendant The Governor of the Bank of Ireland.

This case arises as follows:-

1. The Defendant bank in these proceedings caused an originating summons under Order 88 of the Rules of the Supreme Court (Northern Ireland) to be issued on 20 October 2010 against John Brendan Brown otherwise known as John Brown seeking possession of 9 Baronscourt, Culmore Road, Londonderry. He and his mother Susan Brown had jointly borrowed money from the Defendant bank secured by Susan Brown against that property held in her sole name.
2. Those proceedings were in due course dismissed by Master Ellison on 26 June 2014, albeit subject to the proviso contained in his order allowing the bank to reinstate those proceedings within a period of 7 days. This it failed to do. Prior to dismissing the proceedings Master Ellison had joined Eileen Bradley the daughter of Susan Brown and the

personal representative of the estate of Susan Brown who had died on 29 November 2009 to the proceedings.

3. On 23 October 2014 Eileen Bradley issued her own originating summons against the bank in a representative capacity on behalf of the estate of Susan Brown deceased. That summons was supported by an affidavit from Killian Conwell which avers to Master Ellison dismissing the bank's order 88 proceedings and further avers to a request made by him of the bank to release its mortgage over the property. He then avers to the bank's failure to release the mortgage, which appears to be the premise as far as I am able to tell, for initially issuing proceedings on behalf of Susan Brown's estate.
4. Subsequently when the Plaintiff's summons was given a return date for first hearing Paul Thompson, solicitor, filed a further affidavit in which he set out something of the background history of the transaction. He invites the court to set aside the mortgage against the property on the grounds that Susan Brown acted to her detriment due to the undue influence of her co-borrower her son John Brown, and that the bank was fixed with constructive notice of same.
5. In answer to that the bank responded by way of an affidavit from a bank official Paulette Fuidge of 23 March 2015. In her affidavit Ms Fuidge addresses the issues raised by the Plaintiff Eileen Bradley and further then counter claims on behalf of the bank, requesting the court to grant possession of the property on the grounds of default due to arrears of repayments of the loan. In the alternative she asks that were the Court to set aside the mortgage a declaration of unjust enrichment be made and an order requiring the debt to be paid by Susan Brown's estate.
6. Finally, Eileen Bradley herself filed an affidavit on 30 October 2015 setting out her recollection of the circumstances of her mother agreeing to create the mortgage and averring that her brother John Brown had stopped paying the mortgage upon the death of their mother. She also made significant further averments which I shall turn to in due course.
7. Following completion of the affidavit evidence, discovery of documents was exchanged by the parties, and the court has the benefit of those copy documents.
8. The court also has the benefit of written skeleton arguments of Mr Mercer BL and Mr Doran.
9. The matter was heard on 9 March 2015 when Mr Mercer and Mr Doran made full and helpful oral submissions.
10. Both parties have submitted to the court the leading authorities in this area of law including Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44 and Chater v Mortgage Agency Services No 2 Ltd [2003] EWCA Civ 490 a 2004 English Court of Appeal case. This latter case is particularly helpful because it rehearses and comments on the law as set out by the House of Lords in Etridge. It is also helpful because on its facts it is strikingly similar to this case. I have been substantially

guided by the reasoning of the English Court of Appeal as set out by Lord Justice Scott Baker in the Chater case.

11. The facts in this case are in large part agreed:-

    (i) In or around the 18 July 2007 Susan Brown and John Brown, her son, accepted an offer of a loan from the Defendant bank of just over £300,000. The purpose of this loan was twofold; firstly, to provide resources to enable John Brown to construct a granny flat at his property in England so that his mother could go and live with him. Secondly, monies were to be used on the upgrading and conversion of 9 Baronscourt to a holiday let premises. The Bank documents, which I have seen, including the original application form, clearly indicate that it is anticipated that a substantial rental income would come from the holiday let which would go towards funding the repayments. The loan transaction was entered into following upon receipt of a facility letter of offer which in due course was signed by both John Brown and Susan Brown as borrowers. I need not rehearse the contents of same, suffice to say that it is clear beyond any doubt what they are both exactly agreeing to do. The facility contains a number of cautionary notices of advice and warnings as to the fact that the loan will be a secured loan against 9 Baronscourt. There can be no doubt in my view, in the absence of any evidence to the contrary, that both Susan Brown and John Brown knew what they were doing when they accepted the loan facility.

    (ii) In particular, further to that facility letter Susan Brown agreed to create a mortgage over her property at 9 Baronscourt, Culmore Road, Londonderry.

    (iii) She attended with her solicitor Mr O'Leary of Hasson & Company in respect of the said facility letter and then in respect of signing the mortgage deed. Eileen Bradley refers to a first meeting with Mr O'Leary at which the facility was discussed with the solicitor in the presence of her mother Susan Brown and with herself Eileen Bradley and her brother John Brown also present.

[2] In her affidavit Eileen Bradley says that she protested concerns about the situation were payments of the mortgage to stop. She says however that she was reassured by the solicitor Mr O'Leary that everything would be alright as John Brown would be making the payments. There is no formal evidence before the court from Mr O'Leary. However, the court has had sight of some of the copy correspondence which Mr O'Leary sent in the course of this transaction and also copy attendance notes. All that the court can conclude from this is that a meeting took place with Mr O'Leary, the mortgage transaction was discussed, Mr O'Leary offered advice and

according to his attendance note Susan Brown said that she would go away and reflect upon the matter. I should also say that there is no formal evidence from John Brown whatsoever in respect of these proceedings.

(iv) Susan Brown next called with Mr O'Leary on 28 September 2007 and signed a mortgage deed. The appointment had been arranged by her son Gerard.

(v) She had to call again on 17 October 2007 to sign a fresh deed which she did in Mr O'Leary's presence. I can therefore reasonably conclude that she had decided to proceed after a period of reflection.

(vi) The mortgage deed was subsequently recorded in the Registry of Deeds Belfast on 6 November 2007.

(vii) Following completion of the legal work the mortgage advance was drawn down around 30 October 2007. It appears from Mr O'Leary's attendance note around this time that he received instructions from both Susan Brown and John Brown to issue a cheque made payable to both of them after deducting his fees which he did.

(viii) Mortgage payments were maintained for some time and then fell into arrears following the death of Susan Brown. It is noteworthy that the only evidence in this case as to the actual manner of repayment, other than the averments of Eileen Bradley, is a copy direct debit mandate form completed by Susan Brown alone referring to Susan Brown's bank account.

(ix) John Brown wrote to the Bank after his mother's death informing the Bank that the house at Baronscourt would be sold and the debt paid off in full.

[3] The court is not actually aware of the current amount of arrears, but there appears to be no dispute that the account is significantly in arrears.

[4] The house to date has not been sold and there are to date no proposals from either John Brown or the estate of Susan Brown to discharge the arrears in any other manner.

[5] Those appear to be the uncontentious facts in this case.

[6] The Court is necessarily limited to deciding this case upon the evidence available to it.

[7] Eileen Bradley alleges that the purposes of the loan as stated above have not happened. In particular she avers that the property in Baronscourt has not been converted into a holiday let nor has a granny flat been built at John Brown's property. I have no evidence from John Brown about his

English property and assume that Eileen Bradley has not recently visited it, but I accept that what she says in respect of these matters is most likely true.

[8] The starting point for the court in this matter is simple. Two people, namely John Brown and Susan Brown, took out a loan from the Defendant Bank of over £300,000. They have not repaid it. They have breached the terms of the mortgage contract by allowing the repayments to fall into arrears. The Defendant Bank lent strictly upon receiving valid security over 9 Baronscourt in the form of a mortgage. The mortgage was regularly executed. The Defendant Bank should be able to rely upon its security and recover possession if necessary. This is obvious. Indeed it is often said that the Bank's entitlement to recover possession arises from the moment that the ink is dry on the mortgage deed. It is only in exceptional circumstances that the court will intervene and deprive the Bank of the benefit of its security. To do so routinely would be intolerable. The normal banking arrangements between borrowers and lenders would collapse without the necessary confidence that security could routinely be relied upon.

[9] However, in this case Eileen Bradley on behalf of the estate of her late mother wishes the court to do precisely that. That is to say, to tear up as it were, the mortgage deed and leave the bank without its security.

[10] She pursues this course because she alleges that her brother John Brown exerted undue influence upon his mother Susan Brown specifically to Susan Brown's detriment. To be clear however from the courts position the detriment alleged has to be something more than merely creating a mortgage. It has to be coupled with some element of a disproportionate lack of benefit in whole or in part from the mortgage transaction. It has to be established in other words that John Brown became the principal beneficiary of the monies advanced. I make this clear at this point because whilst I have been given the impression by Mr Mercer and Eileen Bradley in her affidavit evidence that such an imbalance of benefit did occur there is no clear evidence before me that that is in fact the case.

[11] The evidence trail in relation to benefit from the loan stops with the payment by Mr O'Leary of a cheque for the balance mortgage advance made out to both John Brown and Susan Brown upon their joint instruction.

[12] Eileen Bradley does not produce any evidence to show that John Brown got all the money. Her affidavit evidence is silent on this point. Further in his submissions and indeed in his skeleton argument Mr Mercer is careful not actually to say that John Brown got all the money. Let me be clear John Brown may have got all the money. However, I don't know that to be the case. The evidence before me clearly establishes that John Brown and Susan Brown got the money jointly at the point when it left the solicitors office.

[13] It is for the Plaintiff Eileen Bradley to make out her case. She simply cannot rely upon generally disparaging her brother and commenting that her mother shouldn't have got involved in the transaction. As I say I need to know that there has been an imbalanced benefit.

[14] Now Eileen Bradley is the personal representative appointed by this court to administer the estate of Susan Brown. She should be uniquely placed to provide such information in respect of the history of the operation of the mortgage account by Susan Brown from its inception to her death, but she does not. I have not seen an interim administration account. What I have seen is a copy grant of representation which indicates an estate with a value well in excess of £400,000.

[15] In the absence of other evidence I make it clear that I am forced to conclude that Susan Brown appears to have benefited equally from the loan. That is certainly what the bank believed to have happened. Indeed that is what the bank expected to happen.

[16] So if undue influence is established was there an equitable wrong. Given the evidence in this case presented to me I cannot say that there was. Therefore this case could stop here. However, the parties have raised arguments relating to the issue of undue influence and the extent to which notice of same compromises the bank's entitlement to possession. These are important arguments, particularly in the context of a case involving an elderly lady who was 89 at the time that the loan was taken out. Therefore I consider it important to deal with the other legal principles which would usefully fall to be considered.

[17] Firstly was there undue influence. There is clearly no evidence of actual undue influence such as threats or oppressive behaviour by John Brown against his mother.

[18] Rather this is a case where a rebuttable presumption of undue influence may well arise because of the relationship between the borrowers; in this case mother and son.

[19] The test to determine whether a rebuttable presumption arises is clearly set out at paragraph 14 of the judgment of Lord Nicholl's in the Etridge case viz.

(i) is there a relationship of trust and confidence (in this case as between John Brown and Susan Brown) in the management of, in this case, Susan Brown's finances.
(ii) does the transaction proposed itself call for an explanation.

[20] This is the test endorsed by Lord Justice Scott Baker in the Chater case.

[21] Mr Doran invites me to find that as a result of Eileen Bradley's own evidence in her reporting of Susan Brown's talking about John Brown's requests for money and discussions which he had with his mother concerning financial schemes that I should in fact find that there was no trust in the relationship at the relevant time. Indeed it is clear from Mr O'Leary's attendance note that Susan Brown did indeed ask for time to reflect upon the proposed transaction after taking advice. Mr Doran suggests that this indicates that in fact Susan Brown was sceptical of her son. Further in the discovered documents I have seen pages of financial 'doodles' apparently authored by John Brown referring to all sorts of schemes, mainly it appears to do with significant numbers of property bought for investment purposes and John Brown's seeming interest in the tax advantages of certain property structures. These 'doodles' do refer to his mother to some extent. In my view it would be dangerous to place any significant weight on those documents as in truth I have no way of telling that they are definitely the thoughts of John Brown and even if they are should they be held to demonstrate a scheming mind determined to entrap his own mother to his benefit and to her detriment. Clearly I think not. Indeed they could equally be interpreted as John Brown trying to benefit both himself and his mother.

[22] In applying Lord Nicholl's test in this case I am of course significantly hampered by the absence of evidence from Susan Brown. However, in the absence of strong evidence to suggest that John Brown did indeed scheme to the disadvantage of his mother, I am inclined to take the view that ordinarily and in this case the relationship between mother and son would be likely to be one characterised by the necessary trust and confidence.

[23] Does the proposed transaction itself call for an explanation. The Chater case is helpful in this regard. Lord Justice Baker reminds us that of course parents and children regularly make financial arrangements between them which should not demand explanation. Indeed in this case the creation of a granny flat for Susan Brown and the letting out of her Irish house could seem entirely innocuous as Mr Doran urges.

[24] However, at the time Susan Brown was 89 years of age. There is medical evidence that she had suffered considerable ill health including strokes. There is no evidence that she was mentally incapable at the time of the transaction. However, she was clearly vulnerable. There is no evidence that she had ever lived in England before. She was borrowing a very high level of funds over a 10 year period upon a property which at the time was unencumbered.

[25] For those various reasons I consider for the proposed transaction would have called for an explanation.

[26] Now John Brown gives no evidence in this case. He may well feel he doesn't need to. Indeed I note that Eileen Bradley refers to a telephone conversation which she had with John Brown after her mother's death in which he suggested they join forces against the Bank! Maybe he would be quite happy to see the Bank fail in its security. I note that I have been informed during the course of the hearing that the Bank has now issued a writ against John Brown to pursue recovery of the debt against him personally regardless of the position with the security. However, even if one establishes undue influence whether actual or by presumption that is not the end of the matter. That is not the only hurdle which the Plaintiff would have to get over had she satisfied me that there was detriment in this case. I make it clear that for the purposes of this judgment I find that on balance a presumption of undue influence has arisen. I also find that that presumption has not been rebutted. It is important to note that it is not for the Bank necessarily to rebut the presumption. The obligation to rebut the presumption falls upon John Brown in this case and there is no rebuttal evidence. I therefore find that on balance there was undue influence as between John Brown and Susan Brown in this case.

[27] However, the Plaintiff has to further establish that the Defendant Bank was put upon inquiry. Only if she succeeds in that test can she establish that in the absence of the usual protocols and procedures as clearly set out in Etridge the bank is fixed with notice.

[28] This is where, if I might say so, I fear that Mr Mercer has got the cart before the horse. In his skeleton argument and in particular between points referred to from (a) to (g) under the heading 'Put upon Inquiry' he refers to the issue of lack of independent legal advice. The consideration of independent legal advice arises following the bank being put upon inquiry. It is not evidence of itself that the bank has been put on inquiry.

[29] At this point I have found it helpful to rely upon the reasoning of Lord Justice Scott Baker in the Chater case. In particular I wish to quote from paragraph 57 through to paragraph 67 of his judgment in that case:-

> "57. *At this stage the court is considering whether the respondent was put on inquiry as to some equitable wrong. Here the court is not concerned with what was actually happening between mother and son but with what the bank knew about it or, by making appropriate inquiries, ought to have known about it. In the first place this is neither a debtor/surety nor a husband/wife case. What is the information that was available to the respondent? That is the crucial question. Was it sufficient to put it on inquiry as to some equitable wrong? The starting point is that this was a joint application for a joint loan. The net loan eventually*

arrived in the form of a cheque payable to the appellant and her son jointly from their solicitors Humfrys and Symonds.

58. The stated purpose of the loan in the application form was 'purchase'. The fact that this was not true is nothing to the point if the respondent did not know it was not true. The reference to 'purchase' as the stated purpose of the loan in the case of a remortgage is explained by Mr Bishop's evidence (see para 56 above). There is nothing on the documents to suggest this was a loan exclusively for the son's purposes. A lender is not obliged without more to make further inquiries. Even if the respondent was told (see para 54 above) by Mr Terry that the son was purchasing part of the equity in the mother's home there was nothing in that to concern it. The respondent knew the application was by a mother and son, but there are many reasons why a mother, (even if the advance was for the son alone which on the facts known to the bank this advance was not), might perfectly justifiably wish to help him financially and without there being any unfair pressure on her to do so. The respondent knew the property was being transferred into joint names but the evidence was that it would not have insisted upon it as the son was living in the property. The mere fact that this application was by a mother and son and that it was the mother's house that was to be security for the loan is not enough.

59. It is important to look at what message was being given to the respondent by the loan application and anything else it received or that occurred before the documents were executed. There was nothing to indicate the loan was solely for the son's purposes. On the face of it this was a domestic loan, a fact fortified by the word 'purchase' as the stated purpose of the loan. The respondent called Mr Bishop. There is no transcript of his evidence but his witness statement is in the bundle of documents. He has been employed in the mortgage lending industry for over 30 years and was employed by the respondent as the underwriting team under leader for London and South East England at the material time. His evidence was that he would have accepted this as a loan to improve property and it was far from uncommon for a mother in such circumstances to bring her son into the transaction; it was after all a joint loan. A joint application for a mortgage advance from a parent and offspring was not at all unusual, particularly in cases where the property had been purchased under the local authority's right to buy scheme which only allowed the existing tenant to buy the property. He added that the bank's underwriting decision would have been based on the income of the main earner, here the son, and that it

would have been noted from the application form that it was his intention to remain at the property and he was conducting his business from that address. He would have assumed the loan was for improvement of the Chaters' joint living circumstances.

60. How does the law distinguish between those cases in which a bank is put on inquiry and those in which it is not? This question received a good deal of attention from their Lordships in Etridge (No 2) but there the House was dealing with a series of husband and wife cases, Lord Bingham made this general observation at para 2:

> *"It is important that lenders should feel able to advance money, in run-of-the-mill cases with no abnormal features, on the security of the wife's interest in the matrimonial home in reasonable confidence that, if appropriate procedures have been followed in obtaining the security, it will be enforceable if the need for enforcement arises."*

61. He spoke of the risk that a wife has been overborne or coerced by her husband being reduced to a level which made it proper for the lender to proceed. He agreed in particular with the opinion of Lord Nicholls (as did the other members of the House) and the requirements he spelt out to achieve this. Lord Nicholls said this at para 48:

> *"As to the type of transactions where a bank is put on inquiry, the case where a wife becomes surety for her husband's debts is, in this context, a straightforward case. The bank is put on inquiry. On the other side of the line is the case where money is being advanced or has been advanced, to husband and wife jointly. In such a case the bank is not put on inquiry unless the bank is aware the loan is being made for the husband's purposes, as distinct from their joint purposes. That was decided in CIBC Mortgages plc v Pitt [1994] 1 A C 200."*

62. Whilst it is true that Lord Nicholls was referring specifically to husband/wife and unmarried couples situations his distinction between debtor/surety cases and joint advances is, in our view, nevertheless relevant to the present case. So here the bank was not put on inquiry, unless the respondent was aware the loan was being made for the son's business.

63. There was nothing to tell the respondent that what lay behind the transaction was a commercial loan to the son alone.

The respondent owed no duty to discover what the loan was for. It had only its own interests to protect. A lender is not put on inquiry by every further advance application. There is no obligation to ask questions albeit a bank is not entitled to shut its eyes to the obvious. On the face of it this was a joint loan and there was nothing to put the respondent on inquiry that there might be some equitable wrong, nothing to set the alarm bells ringing. And as Lord Hobhouse observed in Etridge (No.2) at para 109 the question whether the bank has been put on inquiry has to be answered on the basis of the facts available to the bank. One of those facts was that the appellant and her son had jointly appointed solicitors, Humphrys and Symonds to act for them.

64. Mr Anderson argues that the threshold to put a lender on inquiry is a low one. It arises in virtually every non-commercial case. This was a 'no questions asked' mortgage where the lender simply did not care what the purpose of the loan was. The fact that this was a mother/son application was nothing to the point. There was more than sufficient in the application form to ask the appellant to be independently advised. He pointed to the fact that a mother and son were less likely to need shared money than a husband and wife; that the nature of the loan was unsuitable for a retired widow and that the rate of interest was very high. Any prudent lender he submits would have realised there was a greater risk in this case than in the ordinary run of cases that it would have to have recourse to its security. There was plainly enough to put the respondent on notice that the transaction might not be of benefit to the appellant.

65. The judge concluded that there was a range of possible scenarios suggested by the application form and that it was at least a possibility for the respondent to consider that undue influence could come into play as one of them. In our judgment, however, there was nothing about the transaction on the information supplied to the respondent that could not readily be accounted for by the ordinary motives of a mother and son especially where mother and son were living in the same house; nothing about the transaction that called for an explanation.

66. The judge referred to Mr Bishop's evidence that an alert underwriter could have inferred as a possibility from the application form that the appellant was either going to transfer the property into joint names or stand surety for the loan. The son was in business as a salesman from the mother's address. One of the real possibilities considered by

the underwriter could have been that a retired mother was using the house as security for her son's loan. As we have said, we have not seen any transcript of Mr Bishop's evidence and this answer appears to have been an answer given by him in the course of cross examination.

67. In our judgment the judge was putting the respondent's obligation too high. The respondent is not a detective and it does not matter what an alert underwriter might have inferred as a possibility. There was no reason why the respondent should not take the loan application at face value and, as Mr Bishop said, this was an application for a joint loan and the reasonable assumption was that it was for improvement of their joint living circumstances. There was nothing to put a prudent lender on inquiry that this might in reality be a commercial loan and that undue influence might possibly underlie the transaction. What mattered was that the transaction could perfectly reasonably be accounted for by the ordinary motives of mother and son. As Lord Nicholls said, where a joint loan (there to husband and wife) is made, a bank is not put on inquiry unless the bank is aware that the loan is being made for the husband's purposes rather than for their joint purposes. Here the bank was not aware that the loan was being made for the son's business purposes rather than the mother and son's joint purposes."

[30] I agree with this analysis. In applying it directly to this case, there was nothing to put the bank upon inquiry. As in the Chater case this was a case of joint borrowing. It was a joint borrowing which on the fact of it clearly would benefit both parties. The Bank had no reason whatsoever to suspect that the loan was for something other than the stated purposes. Indeed it is important to remember that on the basis of the case presented to me there is nothing to suggest that the loan was taken deliberately for another purpose. Further how could I possibly fix the bank with an obligation to be suspicious because of events which had not occurred at the relevant time namely the failure to build the granny flat and to convert the Irish property.

[31] I have carefully reviewed all of the bank's documents. I am satisfied that the Bank took particular care in this case to consider the viability and good sense of the proposed transaction. Consideration was given to Susan Brown's age. References made to the "age exception". The Bank reflects upon the purposes and concludes that the purposes appear to suit Susan Brown's circumstances. Further the Irish property has a high value significantly in excess of the loan. It is likely to derive a significant rental income which will cover the repayments. In the event of default the Irish property will be free to be sold as Susan Brown will be living with her son elsewhere. As Lord Justice Scott Baker says it is not for the bank to become a

detective. For those various reasons I find that the bank was not put upon inquiry in this case.

[32] I wish briefly to address the issue of independent legal advice relied upon by Mr Mercer.

[33] As I have stated already the requirement for same arises following upon the bank being put on inquiry. The lack of it is not a proof of the bank being put on inquiry as Mr Mercer apparently suggests. I am of the view however, that if in this case the Bank had been put on inquiry and therefore independent legal advice had been necessary, that provided by Mr O'Leary would in my opinion have fallen some way short of what is required applying the Etridge guidelines. Mr Doran suggests that because the bank had a concern relating to John Brown's lack of legal title to Baronscourt it recommended that he obtain independent legal advice which he did. I should find that the advice provided to Susan Brown was Etridge compliant because John Brown took separate advice in the title issue. However, I cannot find that to be the case as Susan Brown was at significant times when advised by Mr O'Leary accompanied by John Brown. However, the issue is not important in this case firstly, because there is no detriment which I have been able to find and secondly, the Bank was not put on inquiry.

[34] Therefore it follows from all of that that the bank was not fixed with constructive notice of undue influence resulting in an equitable wrong. For those various reasons I now dismiss the Plaintiff's case.

[35] I see no reason not to allow the Defendant Bank's claim for a possession order. However, before so doing I invite proposals to deal with the arrears in this case. Now Mr Mercer indicates to me that there are no such proposals therefore the order which I will formally make is to dismiss the Plaintiff's summons and grant a possession order in respect of 9 Baronscourt, Culmore Road, Londonderry to the Defendant bank such order to be stayed as to its enforcement for a period of 28 days. I further order that the costs of the Defendant bank are to be paid by the Plaintiff. The Plaintiff in the circumstances is to be indemnified by the estate of Susan Bradley in relation to such order.