

Neutral Citation no. [2002] NICH 9

Mortgage – right to redeem – mortgage in possession – mortgagee’s right to sell by auction – whether mortgagor entitled to retain sale

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

Ref:	GIRH3229
Delivered:	17/09/2002

2002 No 2223

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

GREGORY KEVIN McCAMBRIDGE

Plaintiff;

and

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND

Defendants.

GIRVAN J

[1] On the hearing of this application on 9 September 2002 the defendants (“the Bank”) sought to discharge an injunction granted by Coghlin J on 21 August 2002. By the terms of that injunction the Bank was restrained from selling, parting with title to or possession or otherwise dealing with any of its interests in the premises known as 8 Strandview Road, Ballycastle, County Antrim being the lands comprised in Folio 1588 SDL County Antrim (“the premises”). The order made by Mr Justice Coghlin included an order requiring the Bank to provide a figure for redemption.

[2] The plaintiff was a customer of the Bank and he borrowed substantial sums of money from the Bank to carry out an apartment development at the premises. In order to secure the debt the Bank took a mortgage over the premises dated 17 October 2001. The plaintiff defaulted in his obligations under the mortgage and the Bank duly called in the debt as it was entitled to do. The Bank’s statutory power

of sale had arisen and is currently exercisable. Subsequently on 27 March 2001 the Bank issued an originating summons seeking possession of the premises. In the course of 2001 the plaintiff sought redemption figures in respect of the mortgage debt and indicated that he was hoping to sell the premises or part thereof and pay off the debt. Various assurances to that effect however failed to materialise and the Bank decided to proceed with its application for possession. On 1 October 2001 it was informed by the plaintiff that two of the apartments had been damaged by vandals and that the plaintiff could not afford to pay the insurance on the premises which were at that point uninsured. The Bank decided to take physical possession of the premises and having done so it had the possession proceedings struck out.

[3] The plaintiff wishes to redeem the mortgage and has entered into negotiations with a lender to enable it to do so. The Bank made clear to the plaintiff that it intended to sell the premises by auction and the plaintiff made an application to the court for an injunction to restrain the Bank from doing so. On the hearing of the application Coghlin J, sitting during vacation, acceded to the application as noted above.

[4] In his affidavit of 28 August 2002, received by the plaintiff on 30 August 2002, the Bank set out the redemption figure which currently amounts to £274,225.38 with continuing daily interest at the rate of £44.22 from 30 August 2002.

[5] Mr Sands, counsel on behalf of the plaintiff, informed the court that the plaintiff has arranged bridging finance of £335,000 through a firm called Mortgage and Finance Direct. The plaintiff seeks a short period of time to obtain the funding to pay off the Bank and he asserts that this may take up to some fourteen days to arrange and set in place. Miss McBride on behalf of the Bank argues that the Bank is entitled to proceed with its auction of the premises and that the only way it can be precluded from doing so would be by the plaintiff paying off the mortgage debt by either tendering the amount necessary to redeem or by paying the relevant sum into court. She concedes that the plaintiff may do that at any time up until the Bank has bound itself by contract to sell the premises to a third party.

[6] The authorities clearly establish that a mortgagee, having the statutory power of sale, will not be restrained from exercising its power to sell unless the mortgagor tenders to the mortgagee or pays into court the amount claimed to be due. Thus as stated by Crossman J in Lord Waring v London and Manchester Assurance Company [1935] Ch 310 at 317:

“If before the date of the contract the plaintiff has tendered the principal with interest and costs or has paid it into court in proceedings then if the mortgagee continues to take steps to enter into a contract for sale the plaintiff will be entitled to an injunction restraining it from doing so.”

(See also Macleod v Jones 24 Ch 289 at 296 and see generally *Fisher & Lightwood on The Law of Mortgages*, 11th Edition at paragraph 20.34 et seq.) If the mortgagee has entered into a binding contract of sale the court will not interfere with the sale, even on tender of the amount due, unless the circumstances of the sale point to some impropriety.

[7] The plaintiff has now been aware of the exact amount due for redemption since 30 August. He has neither tendered the sum due nor paid it into court and in the circumstances he is not entitled to prevent the Bank exercising its power of sale. It is clear that at any point between now and the conclusion of a binding contract of sale by the Bank it remains open to the plaintiff to exercise his equity of redemption. In practical terms, having regard to the passage of time from the hearing of the application to discharge the injunction and the time by which an auction can be set up, there will be sufficient time for the plaintiff to tender or pay the sum due if he has a genuine offer of financial assistance. In the circumstances the injunction must be discharged.

[8] I shall hear counsel on the question of the costs of the application for the injunction and application to discharge the injunction.

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JUDGMENT

OF

GIRVAN J
