Neutral Citation No.: [2008] NICh 15 | *Ref:* **DEE7330**

Judgment: approved by the Court for handing down | *Delivered:* **24-01-08**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION

PEN FINANCE LIMITED

V

LEONA LAIRD AND OTHERS

DEENY J

[1] This is an originating summons brought by Pen Finance Limited initially against Leona Laird, and that is how they chose to describe her in the pleadings, and also against Peter McCullough and Moira McCullough subsequently. Mr and Mrs McCullough were the purchasers of a dwelling house in Plumbridge, Omagh, County Tyrone, which had previously been in the possession and ownership of the first defendant. The fourth and fifth defendants were then joined, that is Messrs Crawford and Scally, who are well known solicitors in Strabane. They acted for the first defendant, Mrs Laird, in the sale of her property to Mr and Mrs McCullough. Mr Keith Gibson appeared for the Plaintiff company; Mr Martin McDonnell for the McCulloughs and Mr AJS Maxwell for Crawford and Scally.

[2] In accordance with the practice in Northern Ireland, the vendor's solicitors carried out a search of the title which Mrs Laird had, to enable them to proffer responses to standard pre-contract enquiries, under the prevailing conveyancing system in Northern Ireland. They do not appear to have been told by Mrs Laird that after an initial mortgage to a building society which was later reassigned to the West Bromwich Building Company, she borrowed further money from Prestige Finance Ltd who immediately assigned their interest to the plaintiff and that there was a purported charge on her property. This was unregistered land. One can reasonably infer from the correspondence which subsequently emerged and which was written by them that that was the case i.e. that they had not been informed of that.

[3] They then directed that a search be carried out under this lady's full names of which they were aware : Bridget Leona Laird. At the beginning of the case Mr Gibson for the plaintiff helpfully conceded that that was the lady's name and I decide the matter today on that basis, although neither her birth certificate nor the

actual title document has been put before me, but the case proceeds on that basis. This search was delegated to an experienced law searcher, Mr L T Byrne. L T Byrne then carried out the search under the name Bridget Leona Laird. Mr Brian Walker, solicitor, giving evidence for the plaintiff, concentrates his fire on that, i.e. that the search was not a proper or reasonably careful search and that Messrs Crawford and Sally are vicariously liable for the flaw on the part of their searcher. Certainly the second charge to Leona Laird did not show up on that search.

[4] So a negative search, apart from the West Bromwich mortgage, was returned and the matter proceeded in that way. The solicitors very properly discharged the first mortgage of which they were aware. They did not discharge the second mortgage of which they were unaware. Apparently sometimes a first mortgagee would alert a solicitor to the existence of the second mortgage which was, in fact, known to them but in this particular case they did not do so. The position, therefore, was that Mr and Mrs McCullough paid, apparently, £30,000 for the dwelling. The mortgage, and I so describe it, was discharged and an equity of about £10,000 was passed to the first defendant, Bridget Leona Laird. She then, after making some payments on foot of the second charge to the plaintiff, fell into arrears and they brought these proceedings.

[5] If they are right, and this seems common case between counsel on their helpful submissions, and the second charge which they have, which has not been met by the first defendant, is valid, it has priority over the interest of Mr and Mrs McCullough, who would lose their interest in their lands, unless presumably they could discharge the sum themselves. That would be a palpably unjust result. They are innocent purchasers for value without notice, but, Mr Gibson says that the law must take its course, although he also relies on authority for saying that it must be applied in a sensible and practicable way and observed that it is neither sensible or practicable if such an innocent purchaser was penalised and the court would look scrupulously at such a contention.

[6] In fact the first aspect of the answer to the case seems to be very straightforward and Mr A J Maxwell, who appeared for the fourth and fifth defendants, drew attention to it following Mr McDonnell drawing attention to other relevant matters on behalf of his clients. That is that the registration of deeds is governed not only by the 1970 Act but by the Registration of Deeds Regulations (Northern Ireland) 1997, and searches are carried out for these deeds under the older system in operation in this jurisdiction, through a series of books. In very recent years, the last five years, there has been a computerisation of this system and it is now possible to carry out some of these searches by a method, perhaps by more than one method electronically, but certainly one of those methods is called 'Land Web'. But the Regulations have not been amended and even if one takes into account Land Web, which I am prepared to do, it does not seem to me that it can vary the terms of the Regulations.

[7] Regulation 9 deals with the index of names and Regulation 9(3) says:

"Each entry in the Index of Names shall contain the following:

(1) The surname and first forename and the initial letter of each subsequent forename of each grantor specified in the registered document, followed, where there is more than one such grantor, by the words 'and another' or 'and others' as the case may require".

Regulation 9(3)(2) is to like effect. 9(3)(3) requires the relevant county to be specified. I need not deal with the other aspects set out.

[8] The simple fact of the matter here is that Pen Finance Limited did not register the charge in the surname, first forename and initial letter of subsequent forenames of Bridget Leona Laird. They only registered it in her middle name and surname. I will return to their knowledge of this matter in a moment, but it seems to me that their charge is, therefore, not valid against an innocent purchaser for value without notice. It does not seem necessary for me to decide whether or not the charge is a complete nullity and I am inclined to the view that it may not be but it is certainly not validly enforceable against the second and third defendants.

[9] The relevance of that, of course, is added to in that the searcher, knowing the Regulations, searched in that way – Bridget L Laird – and I do not see how one can possibly criticise or make a finding of negligence against a law searcher who follows the very regulations which are in force. It may be that Mr Walker, and I accept, of course, completely the honesty of his evidence, is right that his practice is to search more intensively than that and ask his searcher to do so, and that may be completely commendable. It is a very different matter from saying it is negligence not to follow that practice. In that regard I note that he accepts that not only are the Regulations not changed but there is no circular or directive from the Law Society saying that a careful solicitor now should search by the Land Web method or should search using this wild card method, which apparently may attract variations in spelling. As I have not heard the evidence for the defendants I do not address Mr Maxwell's point that, in fact, the searcher did use that method but used it in accordance with the Regulation.

[10] What they did was search under the surname, first foreman and initial letter and that should be enough and that would lead me, therefore, to reject the first prayer in the originating summons of the plaintiff, namely delivery by the defendants to the plaintiff of possession of the land. That cannot lie against the second and third defendants. Their second prayer is for payment of the money secured by the mortgage. Bridget Leona Laird did borrow this money and she has not repaid it and while she is no longer the owner of the property, I am prepared to grant a money judgment against her in the sum named by Mr Gibson and proved by Mr Sheldon or agreed by him, namely £10,676.44 with costs.

[11] Now for completeness, I will just say a word about some other aspects of the matter. Mr Gibson relied on the case which Mr Maxwell also cited of Oak Co-operative Building Society v Blackburn (1968) 2 WLR 1053. This was a decision of the Court of Appeal in England and in that case the registration was under the name of Francis David Blackburn but the charge had been registered under Frank David Blackburn. Mr Gibson relied on a paragraph of the judgment which is then summarised in the headnote of the case, namely a paragraph at 1061B and that passage reads:

> "We have come to the conclusion that the registration on this occasion ought not to be regarded as a nullity simply because the formal name of Blackburn was Francis and not Frank and notwithstanding that Frank as a name is not merely an abbreviation or version of Francis but also a name in its own right, as are also, for example, Harry and Willie. We are not led to this conclusion by the fact that initials would seem to suffice for registration of a lis pendens, see *Dunn and Chapman (1920) 2 Ch 474;* at least under the then legislation and rules : for presumably a request for search under a full name having the same initials should throw up all entries under those initials. We take a broader view that so far as possible the system should be made to work in favour of those who seek to make use of it in a sensible and practical way. If a proposing purchaser here had requested a search in the correct full names he would have got a clean certificate and a clear title under section 17(3) of the Land Charges Act 1925, and would have suffered no harm from the fact that the registration was not in such names: and a person registering who is not in a position to satisfy himself what are the correct full names runs that risk. But if there be registration in what may be fairly described as a version of the full names of the vendor, albeit not a version which is bound to be discovered in a search in the correct full names, we would not hold it a nullity against someone who does not search at all, or who (as here) searches in the wrong name".

[12] It is perfectly obvious to me, at least, that that case is clearly distinguishable from the plaintiff's position and indeed is, in effect, an authority for the defendants here. In my view the plaintiff did not operate the system in a sensible and practical way. They were on notice that this lady was called Bridget Leona Laird. It seems to me that the only sensible and practical way to register their charge was, therefore, to register it in her name as they knew it. It may well be that in this age there is a more casual attitude to the use of names; some people indeed choose to dispense with one or more of their names for all practical purposes but in a formal document relating to the registration of land, it is entirely proper that the first forenames should be used and at least the initial letter of each subsequent forename.

[13] The plaintiffs here did not act, in my view, in a sensible and practical way. I do not seek to attribute blame between the plaintiff or the broker or the solicitor. I

have not heard enough to do that but the plaintiff is obviously responsible for any errors on the part of its agent if such occurred. Furthermore, it is clear from this case that this is a decision where one did not search at all or where one searched in the wrong name, but that is clearly not the position here of Mr Scally. He searched in the full names and his searcher searched in the first forename, initial and surname as laid down by the Regulations. Therefore, they did not search in the wrong name and clearly, therefore, Oak Co-operative Society is of no assistance to the plaintiff, in my view, in this case.

[14] I will just fairly briefly indicate that among the discoverable documents received from the plaintiff was a bundle of documents that had come to them from their broker, Down Loans, and beginning with a letter of that firm to the plaintiff of 12th January 2004. The only proof of identity they seem to have was a disability living allowance book or photocopy of the same, in which the lady is expressly described at Mrs Bridget Leona. It seems to me as verging on the astonishing that they did not use the name Bridget in the registration of the charge. The fact that the lady was in the habit of signing herself Leona Laird did not relieve them of that responsibility. In fact when they became alert to the fact that she was called Bridget, which they were also told incidentally by the utility bill which they had obtained, which is simply Mrs Bridget Laird with no reference to Leona at all, they got her to sign a letter saying, "I Leona Laird of the above address am also known as Bridget Leona Laird". It seems to me that this is of no assistance at all to the Plaintiff in this context.

[15] There is a further aspect of the matter which it is not necessary for me to decide but in case anyone wishes to take this matter further, I shall put it on the record. I am very concerned about a letter which appeared in the discovery, undated and again signed by Leona Laird and in the possession of the plaintiff. She says in that letter to them in effect:

> "Dear Sirs
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> I confirm that I am genuinely self-employed as a home help care and have been for the past two years. My average net income is £170 per week and I am financially able to meet the repayments on the proposed loan. I also confirm that I am in receipt of DHSS assistance with my mortgage and they are unaware of my self-employed status".

So the lady seems to be frankly telling the plaintiff that she is practising some fraud or if not a fraud, certainly she is misleading the benefit authorities. So there would have been an issue but it is not necessary for me to decide as to whether either the claim was barred by public policy or if, as I think is implicit in Mr Gibson's submissions, they were seeking some equitable relief on the strict wording of the Registration of Deeds Regulations whether they were coming to equity with clean

hands. It seems to me that they would have had a difficulty there of a considerable kind as well.

[16] Finally though I do not have to strictly rule on the matter, I will say this about the fourth and fifth defendants, Mr Gibson very properly accepts that there is no case of negligence against them. It is likely that they owed no duty of care to the plaintiff, although it would not be appropriate to make a final decision on that point. I am certainly not persuaded that Mr Scally was in anyway negligent in this regard. It may be that he did not have precisely the form that he should have had under the Home Charter but he seems to have had the essential details in his attendance book.

[17] Furthermore, the purchaser's solicitors did seek to extract an undertaking from him that all the charges had been redeemed, but as Mr Walker properly and helpfully acknowledged in his evidence before me on behalf of the plaintiff, Mr Scally was careful in his replying letter to qualify what he was doing and to say that he had discharged the only charge of which he was aware. So it seems to me that there was no sustainable action against him on the plaintiff's own case and it is, therefore, not necessary to hear him or Mr Neil Faris, the learned expert for the defendants. I find in favour of the second, third, fourth and fifth defendants against the plaintiff.