

Neutral Citation No: [2022] NICH 13

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

Ref: McB11898

ICOS No:

Delivered: 30/06/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

PEPPER

v

PYPER

**The Appellant appeared as a Litigant in Person
Mr Corkey of Counsel (instructed by Wilson Nesbitt, Solicitors) for the Respondent**

McBRIDE J

Introduction

[1] The appellant, Mr Pyper, appeals against an order made by Master Hardstaff on 23 February 2022 when he ordered that the appellant and Colette Pyper, “do within 28 days deliver to the respondent possession of the property situate and known as 60 Navar Drive, Bangor, Co Down, BT19 7SW, being the lands comprised in folio 2378L, Co Down” (“the premises”).

[2] Mr Pyper appeared as a Litigant in Person, he applied to have Mr Heggarty act as his McKenzie Friend and the court acceded to this application. Ms Pyper did not appear and was not represented. The respondent was represented by Mr Corkey of counsel. I am grateful to all parties for their oral and written submissions which were of assistance to the court.

Notice of Appeal

[3] The appellant filed his Notice of Appeal on 28 February 2022 and on 21 March 2022. He set out the grounds of his appeal as follows:

“(a) Denied equality of arms.

- (b) The plaintiff has dishonoured our payments.
- (c) Malfeasance.
- (d) Mistake.”

[4] Mr Pyper’s appeal was supported by an affidavit sworn on 24 October 2021 together with a book of evidence. He further filed a book of authorities, a skeleton argument dated 23 February 2022 and a reply to the respondent’s skeleton dated 1 June 2022.

Background

[5] As appears from the affidavit of Mr Mushtag sworn on 17 September 2021 the Pypers entered into a mortgage on 7 September 2007 in which were charged to Edeus Mortgage Creators Ltd to secure repayment of the principal sum of £221,799 together with interest. The mortgage was subsequently transferred to the respondent. The mortgage was for a term of 12 years and contained the usual provisions for repayment and redemption.

[6] Mr and Ms Pyper defaulted in repayment and the mortgagee made demands for payment. As of 17 September 2021 the amount due and owing on foot of the mortgage was £232,406.77.

[7] The mortgagee applied for an order for possession which was listed before Master Hardstaff. Mr Pyper appeared before Master Hardstaff and after hearing submissions the Master made the possession order.

Submissions of the Parties

[8] Mr Pyper does not challenge the validity of the mortgage or the amount due and owing. The main thrust of his appeal and his defence to the possession order is that he has tendered payment in total satisfaction of the mortgage debt.

[9] Mr Corkey submitted that no payments have been made by the Pypers in satisfaction of the mortgage debt and no proposals have been made by them to repay the mortgage balance. He relied on the affidavit evidence of Mr Adair, Solicitor, sworn on 23 December 2021 in which he averred at paragraph 4 that the mortgage debt remained due and owing.

Consideration

[10] As this is an appeal from the Master the court conducted *de novo* hearing. This therefore obviates the need for this court to consider whether the Master denied

Mr Pyper equality of arms in the lower court. The court therefore makes no finding on this ground.

[11] Mr Pyper explained that this ground of appeal was based on his assertion that he was not allowed to “read his defence and counterclaim into the record.” I advised Mr Pyper that I had read all the documents filed in the court and explained that his affidavit formed part of the evidence before the court. Mr Pyper expressed his satisfaction with this approach.

[12] Although, Mr Pyper included malfeasance and mistake in his grounds of appeal, he did not pursue these grounds. Upon enquiry from the Court he stated that these grounds related to his submission he had not been given a proper opportunity to present his case before the Master.

[13] The last ground of appeal was that he had a complete defence to the possession order on the basis he had tendered payment in full in respect of the mortgage debt on 19 October 2020, 4 February 2021 and 15 March 2021. He submitted that on 19 October 2020 payment of the full debt were tendered by his action of endorsing on the redemption letter sent by the mortgagee, the words “accepted for value of £235,233.34 and returned for value without dishonour for settlement and closure of the account.” He submitted that writing this words onto the redemption statement created a bill of exchange and in law it must be treated as a cash payment as it was not returned by the recipient. He further submitted that he tendered payment in this format on 4 February 2021 and again on 15 March 2021. Mr Pyper submitted that in total he had tendered payment in excess of £4m to the respondent. By way of counterclaim he submitted that the respondent had failed to “perform its duties as trustee” and he was therefore entitled to “specific performance to compel performance of the specific duty of obligation as set out in a private notice.” He further submitted that the defence and counterclaim invoked rights under the Recognition of Trusts Act 1967.

[14] In *Child Maintenance and Enforcement Commissioner v Wilson* the court held at para [10]:

“[10] A promissory note is not legal tender. As defined, it is:

An unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand, or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer. (Section 83(1) of the Bills of Exchange Act 1882.)

As a means of extinguishing an existing debt, it can only perform that function if the creditor in the debt has

agreed to that being the case. That was clearly the position in the case of *Fielding and Platt Ltd*, cited *supra*, and which was heavily relied upon by the appellant, in particular for the *dictum* of Lord Denning MR at page 361 to the effect:

‘We have repeatedly said in this court that a bill of exchange or a promissory note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary.’”
[emphasis added]

[15] In the present case there is no evidence that the mortgagee agreed that a promissory note would extinguish the debt. Mr Pyper’s actions in endorsing the redemption statements were unilateral acts and there is no evidence the mortgagee accepted his assertion this amounted to tendered payment.

[16] Further in *Swift 1st Ltd v Quinn* [2018] NICH the court held at para [20] that a submission that payment had been tendered as per the Recognition of Trusts Act was legally without merit.

[17] I am satisfied that the endorsement by Mr Pyper on the redemption statement does not constitute a tendered payment. Further his submission that a Private Trust was created is not valid in law as it was created unilaterally by him and is not therefore binding on the respondent.

[18] In accordance with the evidence of Mr Adair, Solicitor, I am satisfied that the mortgage debt remains due and owing. I further find that no proposal has been made to discharge the debt and, therefore, in all the circumstances the respondent is entitled to the possession order and the Master did not err in making such an order.

[19] Accordingly, I dismiss the appeal.