

Neutral Citation: [2017] NICA 72

Ref: STE10479

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

Delivered: 29/11/2017

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

PREFERRED MORTGAGES LIMITED

Plaintiff/Respondent:

and

DOLORES CHRISTINE JACKSON

First Defendant/Appellant:

and

JEREMY JACKSON

Second Defendant:

Before: MORGAN LCJ and STEPHENS LJ

STEPHENS LJ (delivering the judgment of the Court)

Introduction

[1] This is an appeal by Dolores Christine Jackson ("the appellant") against the refusal by Horner J to grant a stay of an order for possession dated 18 June 2012. The appellant appears in person and Mr Coghlin appears for the respondent, Preferred Mortgages Limited.

[2] The application for leave to appeal was to be heard on 18 October 2017 but prior to that date the appellant applied for an adjournment. For the reasons given in our judgment dated 16 October 2017 we granted an adjournment but directed that the appeal be determined on the papers. We also directed that by noon on 8 November 2017 the appellant submits to the court office with a copy to the respondent's solicitors written submissions in relation to the appeal. We have considered those submissions together with further communications from the appellant. We do not consider that a response to any of the submissions is necessary from the respondent. We now give judgment in relation to the application for leave to appeal.

Background

[3] On 15 February 2006 the appellant entered into a mortgage in favour of the respondent of her premises at 66 Nutts Corner Road, Crumlin, County Antrim, BT29 4SJ (“the premises”) to secure a loan of £185,595 from the respondent to the appellant. On 28 August 2011 the appellant had fallen into arrears and the respondent as mortgagee commenced proceedings seeking an order against the appellant for possession of the premises.

[4] On 18 June 2012 Master Ellison, having heard the appellant who appeared in person, made an order for possession but suspended the order which was not to be enforced without the leave of the court while the appellant made the normal monthly payments together with additional payments in respect of the arrears.

[5] In July 2013 an application was made to the court for enforcement of the order for possession on the basis that the appellant had not made the payments set out in the order of 18 June 2012.

[6] In 2014 the appellant was represented by Carnson Morrow Graham solicitors. On 18 February 2014 the appellant swore an affidavit in which she set out what she contended were triable issues in relation to the possession action and to obtain permission of the court to counterclaim.

[7] On 29 July 2014 the appellant changed solicitors to Orr and Co.

[8] On 12 August 2014 a replying affidavit was sworn on behalf of the respondent purporting to refute the contention that the appellant had any grounds to set aside the possession order and informing the court that there was now negative equity in the premises.

[9] By order of Master Hardstaff dated 18 December 2014 the respondent was given liberty to enforce the order for possession dated 18 June 2012.

[10] On 22 October 2015 when physical eviction was imminent, the appellant, who then again appeared in person, applied to stay the order for possession on the grounds set out in her affidavit sworn on the same date. The application was based on her then age of 69, her poor health and on the prospect that if the action which she had commenced against the broker’s regulator for damages was successful she would be able to discharge the mortgage and that she wished to appeal the Master’s order.

[11] The respondent’s skeleton argument opposing these applications is dated 13 January 2016. As well as setting out the grounds of opposition it stated that the last payment by the appellant was on 29 November 2012. It also stated that the then current approximate value of the premises was £100,000 and that the current outstanding balance on the mortgage was £154,772.70.

[12] On 7 September 2016 Master Hardstaff again ordered that the respondent was at liberty to enforce the order for possession dated 18 June 2012. The appellant appealed that order and that appeal came into the list of Horner J.

[13] On 12 October 2016 and 1 November 2016 the appellant's son, Jeremy Jackson ("the second defendant") sought to be joined in the possession proceedings on the basis that he had been and was in occupation of the premises in which he had an equitable interest. Those applications also came into the list of Horner J.

[14] On 21 November 2016 a replying affidavit was sworn on behalf of the respondent in relation to the second defendant's applications.

[15] On 10 February 2017 by consent Horner J ordered that:

- (1) The enforcement of the order dated 18 June 2012 whereby the appellant was ordered to deliver possession of the premises to the plaintiff be stayed for a period of 90 days from the date of this order provided always that the appellant and the second defendant do forthwith begin to market the premises for sale through the estate agent Norman Morrow.
- (2) The second-named defendant be joined to this action.
- (3) That the second defendant's claim to have an interest in the premises be dismissed as failing to disclose a reasonable defence pursuant to Order 18 Rule 19 of the Rules.
- (4) That the second named defendant did deliver to the plaintiff possession of the premises forthwith.
- (5) That the enforcement of the above order that the second named defendant did deliver to the plaintiff possession of the premises forthwith be stayed for a period of 90 days from the date of this order provided always that the appellant and the second defendant do forthwith begin to market the premises for sale through the estate agent Norman Morrow.

[16] The 90 day period in the consent order dated 10 February 2017 approximates to some 13 weeks. That 13 week period expired on 5 May 2017.

[17] By letter dated 12 May 2017 the plaintiff then again applied for a stay of enforcement of the order for possession. There were then reviews before Horner J on 13, 15 and 22 June 2017 and the plaintiff appeared in person at each review. By order dated 23 June 2017 the learned judge refused the appellant's application. The

learned judge was also asked by the appellant for leave to appeal to the Court of Appeal and he refused leave.

[18] By notice dated 23 June 2017 the appellant applied to this court for leave to appeal on the grounds that:

- “(a) Stay of execution of eviction from my home of over 33 years.
- (b) To keep my home on the market to achieve the best price so that I won’t lose everything I have invested in the property.
- (c) I have taken an ongoing case against Preferred Mortgages and Personal Touch Finance Ltd.”

[19] The appellant has provided this court with a written submission dated 8 November 2017. In those submissions she makes the following points:

- (a) She accepts that she “was lent a mortgage on (her) home ... by an advance from (the respondent).”
- (b) She asserts that the mortgage and loan was mis-sold.
- (c) She is awaiting a report from Dan Shearing investigator for the Financial Ombudsman in relation to Personal Touch Finance.
- (d) She gave McKinty & Wright Solicitors for the respondent a promissory note.
- (e) She asserts that the respondent and his solicitors know that the premises was worth a great deal if put into the hands of a developer.

Discussion

[20] We do not consider that the order for possession should have been stayed on the basis of any of the reasons now advanced by the appellant. In arriving at that conclusion we note that the appellant consented to the order for possession being enforced as from 5 May 2017. All the arguments she now raises were disposed of on consent before Horner J on 10 February 2017. Nothing has subsequently arisen which in the interests of justice demand that a stay be granted.

[21] Furthermore, a considerable period of time has elapsed since these proceedings were commenced. We note that the order for possession relates to the appellant’s house which she has lived in for a substantial period but that is not a reason to stay enforcement of the order for possession. The appellant has had years

in which to bring proceedings against Personal Touch Finance or against the respondents in relation to any alleged mis-selling. There have been years to bring the matter to the attention of the Ombudsman. There has been substantial delay on the part of the appellant and we refer to the matters raised by us at paragraph [24] of our earlier judgment dated 16 October 2017. The respondents are entitled to an order for possession. None of the ends to be achieved by a stay are merely to temper the rigours of the law. The purpose of a stay is to achieve justice according to the law not to thwart or delay the outcome of litigation.

Conclusion

[22] We refuse the appellant's application for leave to appeal.

[23] We invite written submissions from the respondent in relation to costs on or before noon on 6 December 2017 and written submissions from the appellant in reply by on or before noon on 13 December 2017.