Neutral Citation No: [2019] NICA 60 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **STE11103** *Delivered:* **13/11/2019**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM

THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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BETWEEN:

SWIFT 1st LIMITED

Plaintiff/Respondent:

-and-

JOHN CHARLES QUINN

-and-

ITA BERNADETTE QUINN

Defendants/Appellants:

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Before: Morgan LCJ, Stephens LJ and Deeny LJ

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Stephens LJ (delivering the judgment of the court)

Introduction

[1] John Charles Quinn and Ita Bernadette Quinn ("the appellants") bring this appeal from the decision of McBride J ("the judge") who granted leave to Swift 1st Limited ("the respondent") to enforce a repossession order dated 18 June 2007 in respect of premises at 196 Bush Road, Dungannon, County Tyrone BT71 6EZ ("the premises"). The appellants are the owners and by a deed dated 16 March 2006 are the mortgagors of the premises. The respondent, having advanced £140,000 to the appellants on the security of the premises are the mortgagees. The appellants fell into arrears on the mortgage repayments and the respondent obtained the repossession order dated 18 June 2007. However, the respondent required leave to enforce repossession as that order provided that it was not "to be enforced without the leave of the court while the (appellants) pay to the (respondent) equal sums of £1,600 on or before the last day of every calendar month …, the first such payment to be made on or before 30 June 2007." The respondent contended and the judge found

that the appellants had failed to make those payments. As we have indicated the judge gave the respondent leave to enforce the repossession order.

[2] The appellants represented themselves both before the judge and in this court. The respondent was represented by Mr Keith Gibson before the judge and in this court. As the appellants were personal litigants in this court a direction was given for a review to take place the purpose of which was to explain to the appellants various aspects of the appeal process. At that review the option was given to the appellants, which they and the respondent accepted, to have the appeal determined on written submissions alone. As a consequence the appellants filed written submissions as did the respondent. The appellants then filed further written submissions in reply to the respondent. In addition the respondent filed two large lever arch files of documents and the appellants filed a booklet of authorities. All of those documents have been considered by the members of this court.

The first instance decision

[3] The judge in her careful and detailed judgment set out the history of the proceedings. That history included that the appellants had not appeared on the hearing of the application on 18 June 2007. The judge noted that subsequently they wished to appeal that order out of time on the basis, amongst others that the mortgage deed was defective. The judge recounted as to how she had refused that application to extend time for an appeal and that order had not been appealed to this court.

[4] The judge recounted how the appellants had lodged in court various documents including a "NOI-Notice of Interest", "SOI-Statement of Interest", "Memorandum of Trust Deed" and "Special Delivery Receipts." At the hearing before the judge Mr Quinn referred to these documents submitting that they established that he had "tendered payment by way of equitable asset on 16 May 2018 as per the Recognition of Trust Act 1987." On this basis Mr Quinn contended that the court should dismiss the respondent's application.

[5] The judge recorded that the amount due and owing on foot of the mortgage at the date of the hearing before her was £289,138.17 and that there were arrears of £99,619.14.

[6] The judge determined that the respondent had established that the terms of the suspension set out in the repossession order had been breached. Thereafter the judge went on to consider whether the appellants had tendered payment and whether she should exercise her discretion to stay, suspend or otherwise postpone the order of delivery of possession.

[7] In relation to the appellants' submission that payment had been tendered the judge analysed the various documents that had been submitted. She held that the documents relied upon by the appellants as evidence of payment were legally

meaningless. She also held that they were unilaterally entered into by the appellants and were not signed by the respondent so that they were not binding on the respondent. In addition the judge stated that "the (respondent's) evidence is that payment has been tendered and has submitted sworn evidence that the debt remains outstanding." We consider that there is a simple typographical error in this part of the written judgment as all the respondent's evidence is that payment had **not** been tendered and on that basis we insert the word "not" into that sentence before the word "been."

[8] The judge then carefully analysed the question as to whether she should stay enforcement of the repossession order. The judge recounted that she had given the appellants an opportunity to file affidavit evidence setting out any basis upon which the court should stay, suspend or postpone delivery of possession of the property and that no such evidence was ever provided by the appellants. The judge went on to state that in "the absence of any proposals for payment of the debt there is no evidence before the court that, *"the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage…."* Accordingly, the judge declined to adjourn, suspend or postpone delivery of possession granting the respondent's application for leave to enforce the repossession order.

The grounds of appeal

[9] The appellants' Notice of Appeal identifies the grounds of appeal as being:

> "1. Payment has been tendered. 2. Mistake. 3. Error.
> 4. Deception. 5. Concealment."

The Notice of Appeal does not comply with Order 59 Rule 3 (2) of the Rules of the Court of Judicature (NI) 1980 but we afford the appellants a degree of latitude given that they are litigants in person, see *Boylan-Toomey v Boylan-Toomey* [2008] NIFam 15. The appellants' skeleton argument and the response of the appellant to the respondent's skeleton argument did not identify any mistake, error, deception or concealment in the judge's decision. We consider that the only issue raised by the appellants is under the heading "Payment has been tendered."

Discussion

[10] The documents upon which the appellants rely purport to have created a trust called the "Tut-Tut Private Trust 140518jc" in which:

(i) The settlors are John Charles Quinn and Ida Bernadette Quinn.

(ii) The trustees purport to be Amanda Brooks and Andrew Robert Punch, Directors of the respondent.

(iii) The trust property is property with title number 180514jc with special tracking number of BH709460533GBjc.

(iv) The Beneficiaries of the trust are John Charles Quinn and Bernadette Ida Quinn.

We consider that whilst the settlor, trustees and beneficiaries can be identified in the sense that they physically exist, it is difficult to understand what exactly the trust property is. The trust property is described as property with title number 180514jc and is associated with, what has been described by the appellants as "an equitable asset."

[11] The documents have been further supplemented by another document attached to the appellant's Skeleton Argument/Submissions (which was served after the judge's decision) and is referred to as an 'Updated – 20/11/2018 Deed of Trust.' In it, the appellants appear to be making provision for the appointment of Eamonn Scullion as a special trustee to compel specific performance of the delinquent trustees (it is presumed the delinquent trustees are meant to be Amanda Brooks and Andrew Robert Punch but no clarity is provided).

[12] We agree with the conclusion of the judge that these documents are legally meaningless. They do not constitute the tender of payment. There is no value or worth in whatever purports to have been created. In any event the creation of a trust (however valuable) does not constitute a tender of payment. We dismiss that ground of appeal.

[13] We also consider that the appellants have not established any error in the first instance judgment. There are no grounds on which the judge ought to have granted any further stay of the enforcement of the repossession order. We dismiss the appeal

Further matters

[14] In dismissing the appeal in addition to considering all the documents made available to us we have also considered the appellants submissions in relation to discovery and in relation to joining Eamonn Scullion as a third party.

[15] In their skeleton argument the appellants seek to make an application for discovery but they do not specify the documents which are sought on discovery. We note that before the hearing before the judge the parties exchanged lists and provided documents. We do not consider that there is any further document that should be made available by the respondent.

[16] There is an application contained in paragraph 4 of the appellants' submissions that Eamonn Scullion be added as a third party on the grounds that he has been appointed as a Special Trustee. We do not consider it necessary or appropriate to join Mr Scullion as a third party.

Conclusion

[17] We dismiss the appeal and order the appellants to pay the respondent's costs to be agreed or taxed in default of agreement.