THE HIGH COURT

[2021] IEHC 7

[Record No. 2016/948 P]

BETWEEN

KEN FENNELL

PLAINTIFF

AND

BEN GILROY, ANDERSON PRADO, SYLWIA WALISZEWSKA TRADING AS SUN BODY SOLARIUM, PAUL O'CALLAGHAN, MARIUSZ JURKIEWICZ AND ARTHUR FLUSKEY

DEFENDANTS

THE HIGH COURT

[Record No. 2016/949 P]

BETWEEN

KEN FENNELL

PLAINTIFF

AND

BEN GILROY AND GARY WILDMAN

DEFENDANTS

JUDGMENT of Mr. Justice Mark Sanfey delivered on the 15th day of January, 2021

Introduction

1. The plaintiff in each of the above related actions was appointed receiver over two properties by Allied Irish Banks plc ('AIB'). These properties were located respectively at 131D Slaney Road, Dublin Industrial Estate, Dublin 11, comprised in Folio no. DN6964F, and 89F Lagan Road, Dublin Industrial Estate, Dublin 11, comprising part of Folio DN35527F. I will refer to those properties as 'Slaney Road' and 'Lagan Road' or collectively as 'the properties'. The first action above – record no. 2016/948 P – relates to Slaney Road; the second – record no. 2016/949 P – relates to Lagan Road.

2. The plaintiff ('the receiver') initiated both sets of proceedings on 4th February, 2016. On the plenary summons for both cases, he sought possession of the applicable property along with a range of other injunctive reliefs seeking*, inter alia*, to prevent any interference with or obstruction of the receiver in taking possession. The first named defendant was the only defendant to enter an appearance to either proceedings, or to participate in the litigation.

3. An application for interlocutory injunctive relief was made by the receiver in the first set of proceedings above in relation to Slaney Road, seeking similar reliefs to those sought on the plenary summons. The first named defendant contested this application fully. An equivalent application was made by the receiver in respect of Lagan Road in the second set of proceedings above. In the latter proceedings, the order ultimately made by the court records that the first named defendant had confirmed to the court that, in respect of the interlocutory application by the receiver in those proceedings, he would be bound by the judgment of the court in relation to the interlocutory application in the Slaney Road proceedings.

4. The interlocutory application was heard by Gilligan J. on 6th April, 2016. The court reserved its decision, and Gilligan J. delivered a written judgment on 20th April, 2016, in

which he granted the full range of interlocutory reliefs sought in each of the proceedings. It appears that the receiver duly recovered possession of each of the properties on foot of the orders made. In each of the cases, the defendants were ordered to pay the costs of the motion when taxed and ascertained.

5. Notwithstanding this adverse finding, the first named defendant insisted that the matters proceed to plenary hearing. The appropriate pleadings were exchanged, and the matter came on for hearing before me on 14th January, 2020. After a two-day hearing, the first named defendant – who represented himself with the assistance of a 'McKenzie Friend' – requested permission to make brief written submissions, and given that there had been oral evidence from a number of witnesses in the course of the hearing, made an application for the digital audio recording (DAR) of the proceedings in order to be able to compile a comprehensive submission. Given the complexity of the issues, the fact that the first named defendant was unrepresented, and the fact that judgment would be reserved in any event, I acceded to this application. I indicated that I would give the plaintiff – who had already delivered written submissions – an opportunity to make supplemental written submissions on receipt of the first named defendant's submissions, and that both parties would be given an opportunity to address the court in relation to their respective submissions.

6. After some delay in obtaining the DAR, the first named defendant duly delivered written submissions on 18th March, 2020 in accordance with the order of the court. Unfortunately, it did not prove possible, due to restrictions consequent upon the Covid-19 Pandemic, to convene a hearing in relation to the submissions until 16th October, 2020. Having heard the parties on that date, I reserved my judgment.

Background

7. As we shall see, the first named defendant raised a number of issues, and the plaintiff complained that some of those issues were either issues which did not fall within the proceedings, or which the first named defendant was not entitled to raise. I propose to give the court's judgment on these issues, which I will set out after a brief explanation of the background to the matter.

8. The appointment of the receiver was in respect of the liabilities of Mr. Christopher Noone ('Mr. Noone'). By a facility letter of 18th June, 2009, AIB advanced three separate loan account facilities totalling in excess of €1.6m to Mr. Noone. The letter specified that security for the sums advanced would include an "*all sums mortgage*" over Slaney Road and Lagan Road.

9. This facility letter stated that the facilities were approved subject to the terms and conditions in the letter itself, but also subject to AIB's "*general terms and conditions governing business lending*", and a copy of that document was enclosed with the letter. In relation to Slaney Road, Mr. Noone executed a mortgage/charge on 29th September, 2009 as security for all sums due to AIB. The applicable general conditions of 2006, which the parties are agreed are the applicable conditions, provide that the mortgagor covenant not to convey, transfer, assign, let or part with possession of the property "*without the*

express prior consent in writing of the Lenders" [Clause 6.1(j)]. There was a further clause whereby the borrower covenanted not to exercise the mortgagor's power of leasing under s.18 of the Conveyancing Act 1881 ('the 1881 Act') without the prior written consent of AIB [Clause 6.1(k)]. Under clause 7.2(d) of the General Conditions, the statutory power of appointment of a receiver granted by the 1881 Act was incorporated.

10. In relation to Lagan Road, Mr. Noone executed a charge on 2nd February, 2009 to secure all sums due to AIB. At Clause 7.01(e) of the charge, the mortgagor covenanted in similar fashion to the conditions set out at Clause 6.1(j) and (k) of the General Conditions as set out above. Clause 8.01(d) of the charge also provided for the incorporation of the statutory power of appointment under the 1881 Act.

11. Mr. Noone defaulted on his repayment obligations to AIB, which obtained a default judgment against him on 24th October, 2011 in the sum of over €2.181m. The judgment was not satisfied, and by separate deeds of appointment of 20th October, 2014, the plaintiff was appointed receiver over the properties. After encountering difficulty in securing possession of the properties, the receiver issued the proceedings herein. The various defendants were believed to be in occupation of the properties at the time. However, none of the defendants other than the first named defendant appears to have furnished proof of any entitlement to be in occupation of the properties. Significantly, Mr. Noone has not challenged the receiver's appointment or asserted an entitlement to possession which would supercede that of the receiver.

12. Ultimately, as set out above, an application for interlocutory relief was made by the receiver with a view to obtaining possession, with Gilligan J. ultimately granting the reliefs sought. Notwithstanding this decision, the first named defendant demanded a statement of claim from the receiver. In the amended defence and counterclaim in each case, the first named defendant set out a series of denials of the matters relied upon by the receiver, specifically disputing the lawfulness of the appointment of the receiver and his occupation of the properties. It was denied that the mortgage in each case had "*any legal effect"*. Specifically, the first named defendant pleaded as follows: -

> *"11. It's denied that the defendants have no lawful entitlements to occupy the buildings, further there is no requirement for the defendant to show trespassers any lawful excuse. It's denied that there is no consent from AIB and the plaintiff will be on strict proof of same".*

13. In the case of each property, AIB's charge was registered, with AIB acknowledged as owner of the charge. Everyday Finance DAC ('Everyday') subsequently acquired both charges, and is now registered on each folio as owner of the applicable charge. In his oral evidence before me, the plaintiff confirmed the novation of his appointments in favour of Everyday, which I was informed had taken place by a deed dated 2nd August, 2018. In his oral submissions, counsel for the plaintiff made it clear that, as regards any contention of the first named defendant that AIB was not entitled to appoint the plaintiff as receiver, the plaintiff would rely on the provisions of s.31 of the Registration of Title Act 1964, which provides that the register is "…*conclusive evidence of the title of the*

owner of the land as appearing on the register and of any right, privilege, appurtenance or burden as appearing thereon…", except in certain defined circumstances which the plaintiff asserts do not apply in the present case.

Oral evidence

14. Mr. Aidan Maher gave evidence at the hearing on behalf of the receiver. Mr. Maher is an employee of AIB, and in 2014 at the time of the appointment of the receiver was one of the assistant company secretaries of AIB. He explained the procedure then current in AIB in relation to executing documents under seal, stating that the policy of AIB at that time was that deeds of appointment of receivers would always be authenticated by execution under seal. He explained that any document for sealing required a memorandum from the appropriate department confirming that the document was appropriate for sealing. While he did not remember the circumstances in which these specific deeds of appointment were executed, he confirmed that the authenticating signatures were those of himself and a colleague, Louise Cleary, and that he had no reason to consider that the deeds were executed by him and Ms. Cleary other than with the consent and authority of the bank.

15. Mr. Maher was cross-examined by the first named defendant in relation to exactly who employed him. The first named defendant sought to draw a distinction between "*Allied Irish Banks, plc*" and two other entities in Northern Ireland and the UK which allegedly had the same name, but without the comma. Mr. Maher confirmed that he was the assistant company secretary to Allied Irish Banks, plc, and that his *"sole role was to the Irish company. [He] didn't have any involvement in the UK company or the Northern Ireland company*" [Day 1, p.40, lines 4-5]. The first named defendant stated during the cross-examination that he would adduce evidence in relation to this issue, although he did not subsequently do so. The issue was however the subject of submissions by the first named defendant, which I will address below.

16. The plaintiff also gave evidence before the court. He endorsed the substance of his affidavit grounding the interlocutory application, and confirmed his signatures on the deeds of appointment. He stated that, while Mr. Noone had corresponded with him objecting to his appointment, he did not issue any proceedings in an attempt to unseat the receiver, either against him or against AIB. While the receiver had been apprised by letter of 20th January, 2015 from the first named defendant that he was "*…renting the upstairs unit of 131D Slaney Road and the upstairs offices of 89F Lagan Road…*", he had not been provided by the first named defendant with any details or documentation in relation to any such tenancy, or any indication that AIB was ever aware of such tenancy. The first named defendant said that Lagan Road had been sold, but that Slaney Road currently had a tenant under licence from him. The receiver confirmed the novation of his appointment with Everyday.

17. The receiver was cross-examined by the first named defendant. His questions were the subject of frequent objections from counsel for the receiver. It became apparent that most of the matters which the first named defendant sought to put to the receiver related to legal points the first named defendant wanted to raise, and were not appropriate

matters for cross-examination. To the extent that matters emerged from cross-examination which are relevant to the first named defendant's submissions, I will deal with these below.

18. The first named defendant called Mr. Noone to give evidence, and spent some time questioning him in relation to his dealings with AIB. It was suggested by Mr. Noone that internal documentation which he had received from AIB made it clear that AIB was aware that loans to him were used for the purpose of purchasing commercial properties, and that in the case of some properties, AIB itself was receiving rents. On cross-examination, Mr. Noone was asked about his arrangements with the first named defendant regarding the properties. Mr. Noone said that he and the first named defendant had "*two verbal agreements"* which were made "*before the receivership*". He said that the first named defendant "*had offices in there for his political party in Lagan Road";* it was a "*very loose arrangement*", in which Mr. Noone said to the first named defendant "*…yes, you can have these offices here and you can have them indefinitely…*". Mr. Noone denied that this arrangement was "*forever*". As regards Lagan Road, Mr. Noone said that he and the first named defendant had not "*got any rent in place*". If the first named defendant's dance studio in Slaney Road "*had gone well for him, he was going to pay…he was going to spend the money refurbishing all that because the thing was a shell and he had agreed that he would spend the money, him, and wherever he was getting the money from I don't know but he had said that he had somebody to invest in it. And I said: 'You fire away and when it comes good for you start paying me some rent', and that was the agreement".* [Day 2, p.29, lines 23-29].

19. Mr. Noone was asked whether he told the bank about his arrangement with Mr. Gilroy. He said in somewhat emphatic terms that he did not, commenting that "*…I don't think it would have been any of the bank's business".* Mr. Noone also confirmed that, while he objected to the appointment of the receiver, and continues to object to it, he was not in any way confused about the fact or nature of the plaintiff's appointment.

20. After Mr. Noone's evidence had finished, the question of whether the first named defendant himself wished to give evidence was canvassed. He appeared to be under the impression that he could rely on the affidavit which he had submitted in the course of the interlocutory application, together with the submissions which he intended to make. I pointed out to him that the affidavits were not a part of the trial of the action, and that he had an opportunity to adduce oral evidence, which he had exercised in relation to Mr. Noone. I explained that if he wished to give evidence of his own deeds or other matters of which he had first-hand knowledge, he would have to do so in oral evidence, or run the risk that I would not permit him to make any assertions in this regard during the course of his submissions.

21. The first named defendant confirmed that, as regards his submissions, they would be "*solely, as I see them, on the illegality of the receivership*". I invited the first named defendant to reflect on this matter over lunchtime and to confirm his position on the resumption of the case. After the break, the first named defendant confirmed that he had

considered the position, and stated that "…*with the evidence adduced from the witnesses and the documents referred to the court, I'm happy enough that I can prove that Ken Fennell is not validly appointed"* [Day 2, p.48, lines 22-24].

Preliminary issue

22. Mr. James Doherty SC made submissions on behalf of the plaintiff at the conclusion of the evidence on 15th January, 2020. The first named defendant declined to make oral submissions, indicating that he wished to deliver his written submissions before addressing them in oral argument. He subsequently delivered written submissions, and the plaintiff in accordance with my direction delivered supplemental written submissions in reply. The first named defendant and Mr. Stephen Walsh BL for the plaintiff made brief oral submissions when the matter resumed on 16th October, 2020.

23. At the outset of his oral submissions, Mr. Doherty raised the point as to whether, on consideration of the evidence, the first named defendant had any standing or basis upon which to defend the matter at all. As counsel put it: "…*it's now clear on the evidence that the whole foundation upon which Mr. Gilroy has sought to defend the case… [A]nd indeed his very standing to defend the case is based on a fiction… [T]he fiction being that he was renting property or parts of the properties from Mr. Noone from the outset, such that he had subsisting rights in the property which he contended were rights that bound the bank. None of those things are true*." [Day 2, p.48, lines 29-34].

24. This theme was developed on behalf of the plaintiff in the supplemental submissions. It was submitted that the evidence in relation to the lease, the key points of which I have summarised at paras. 18-19 above, makes it clear that the alleged agreements had no fixed term and no reserved rent. As the plaintiff points out, s.3 of the Landlord and Tenant Amendment Act Ireland 1860 ('Deasy's Act') clearly requires the reservation of rent as an essential element of the relation of landlord and tenant. It was further admitted that the alleged leases were "*neither in writing (as required in respect of leases for a term of more than one year – Section 4 of Deasy's Act) nor were they evidenced in writing (as was required in respect of any agreement for lease by Section 2 of the Statute of Fraud 1695, as is now required by Section 51 of the Land and Conveyancing Law Reform Act 2009*)" [para. 7.3, supplemental submissions of plaintiff, emphasis in original].

25. In each of the statements of claim in the two proceedings, the plaintiff pleaded that the first named defendant had no lawful entitlement to refuse the plaintiff access to the property, was a trespasser, and had not provided any lawful excuse to justify his occupation of the properties. It was further pleaded that AIB did not consent to any tenancy being granted over either of the properties, and that the first named defendant had not produced any documentation to demonstrate that such a tenancy was granted. The plaintiff pleaded in each case that the absence of consent rendered any alleged tenancies void. In the amended defence and counterclaim in both cases, the first named defendant pleaded at para. 11 in the terms set out at para. 12 above.

26. Notwithstanding this plea, there was no evidence before this Court that AIB consented to the alleged lease between the first named defendant and Mr. Noone. Indeed, it was clear from the evidence of Mr. Noone that no such consent had been procured; as far as Mr. Noone was concerned, his arrangements with the first named defendant were none of AIB's business. Even if AIB was aware in general terms that Mr. Noone was renting out his properties, this does not preclude the necessity under the mortgages for written consent for any specific arrangement between the first named defendant and Mr. Noone to be provided by AIB.

27. It is well established in this jurisdiction that a lease or agreement for a lease granted in breach of a negative pledge does not bind the mortgagee or any receiver appointed by it: see in particular the judgment of Dunne J. in *Re N17 Electrics* [2012] 4 IR 634. This decision has been followed in numerous subsequent decisions of this Court, and must be regarded as settled law.

28. Somewhat surprisingly, the first named defendant did not address the question of his interest in the property, or his standing to defend the proceedings, in either his written submissions or his oral submissions on 16th October, 2020. In his submissions to the court, Mr. Doherty made the point that Mr. Noone, as the borrower and owner of the lands, would have been entitled to challenge the appointment of the receiver, but had chosen not to do so. Counsel submitted that the first named defendant had no standing to defend the proceedings: as Mr. Doherty put it, the first named defendant "…*is the veritable stranger on the street who decides to interfere in somebody else's private contractual arrangement*" [Day 2, p. 50, lines 13-14].

29. Based on the evidence before me, it is very clear that the "*very loose arrangement*" between the first named defendant and Mr. Noone did not constitute any kind of lease or enforceable agreement which would entitle the first named defendant to challenge the receiver's right to the reliefs sought. The first named defendant has maintained throughout the proceedings that he has a lawful entitlement to occupy the properties. This was pleaded at para. 11 of each defence, and again at para. 17 of the counterclaim, in which he referred to his entitlement "…*to have quiet and peaceable enjoyment under his lawful lease agreement*…". He has failed to establish any such agreement which would give him an interest in the property such as would entitle him to challenge the receiver's appointment and right to possession.

30. Even if the first named defendant had an agreement for lease with Mr. Noone, it is clear that any such agreement did not have the written consent of the mortgagee, does not bind AIB, and cannot be relied upon as an interest sufficient to defeat the right to possession of the mortgagee or the receiver on its behalf.

31. In all the circumstances, I am satisfied that the first named defendant is not entitled to resist the receiver's application, or to put forward the many arguments he has made in his written submissions. My conclusions in the foregoing paragraphs are sufficient to find in the plaintiff's favour. However, I propose to deal briefly with the other arguments presented by the first named defendant.

The first named defendant's submissions

32. The first named defendant complains of what he contends was a failure by the receiver to furnish "*original documentation to prove his title*". However, no discovery was sought by the first named defendant, nor was any notice to produce served on the plaintiff. Notwithstanding this, the original deeds of appointment were made available at the hearing to the first named defendant, who took no issue with their authenticity or condition.

33. It was submitted that the principle of "*delegatus non potest delegare*" precluded the receiver from delegating his duties to anyone else. This submission is misconceived; a receiver is clearly entitled to employ professional advisers or other agents on his behalf, and such actions do not infringe against the principle of non-delegation.

34. A number of complaints were made about the deed of appointment. Firstly, the first named defendant submitted that the description of the properties in each case was not contained in the body of the deed, but rather in a schedule to the deeds. This however ignores the fact that the deeds refer in each case to the schedule which identifies the property. It was not suggested to the receiver in cross-examination that the schedule was not attached to the deed when he signed it.

35. Secondly, the first named defendant asserts that, in the case of Lagan Road, there is "*no legal certainty to the property identified"*, as the deed of appointment of the receiver refers to "*89 Lagan Road*" as opposed to "*89F*". However, the mortgage of 2nd February, 2009 correctly references "*89F*", although it does refer to "*Langan Road*", an error which is not fatal as the correct folio number is contained in the schedule description. There is no conceivable doubt on the part of any rational objective observer that the deed of appointment of the receiver, which specifically referred to this mortgage, was in respect of 89F Lagan Road, and it is not suggested that Mr. Noone was under any doubt or misapprehension in this regard.

36. The first named defendant alleged that "*the alleged authorised signatures [on the deed of appointment] are by mark and not by reference*". However, Mr. Maher in his evidence identified the signatures as those of himself and his colleague Ms. Cleary. There is no requirement that the identity of a signatory to a deed of appointment be discernible from the signature: see the dicta of Baker J. in *Kavanagh v. Walsh* [2018] IEHC 91 at paras. 25-28 in this regard.

37. In relation to Slaney Road, it is submitted that the deed of appointment is incorrect as AIB Mortgage Bank is omitted in the recital from the parties to the mortgage. In fact, by the time the deed of appointment was executed, AIB Mortgage Bank had released its security in respect of Slaney Road. The deed of appointment therefore correctly reflected the parties to the mortgage at that point.

38. The first named defendant then goes on to refer to an issue which has not been pleaded, and in respect of which he tendered no evidence, although Mr. Maher was cross-examined in relation to it. The first named defendant tried to draw a distinction between "*Allied*

Irish Banks, plc" and different companies of the same name who do not have a comma in the title.

39. It should be noted that both mortgages and both deeds of appointment refer to "*Allied Irish Banks, plc",* which is the correct formulation of the title of the Irish entity which Mr. Maher swore was his employer and on behalf of which he acted in the matter. His evidence in this regard was uncontradicted. There was no suggestion that Mr. Noone was under any misapprehension as to what bank had appointed the receiver. There is no substance to the first named defendant's point in this regard.

40. The first named defendant made submissions to the effect that resolutions of the board of directors, such as the resolution authorising Mr. Maher and Ms. Cleary to sign deeds of appointment, or a resolution by which the execution of deeds as instruments underhand were retrospectively ratified by AIB, were required to be registered with the company's registration office. This is simply incorrect. Neither s.143 of the Companies Act 1963, nor its successor s.198 of the Companies Act 2014, have this effect, referring as they do to resolutions of members rather than directors. Regulatory sections such as these, or SI163/73 - European Communities (Companies) Regulations 1973 - do not deprive a company of its ability to engage agents who are authorised to bind the company. In any event, it was clear from Mr. Maher's un-contradicted evidence that, in signing and sealing the deeds of appointment, he and Ms. Cleary were authorised by the bank to do so. Even if AIB had not retrospectively ratified their actions in this regard, it is clear that AIB has impliedly ratified the receiver's appointment and has supported it ever since, as can be seen from the conduct of this litigation.

41. During the course of the hearing, the first named defendant made reference to his belief that AIB Mortgage Bank had sold the mortgages in question. He referred to this again in his written submissions, implying that there had been a lack of candour with the court in that nobody from AIB had come to court "*to be cross-examined in relation to any such sale agreements*…". He implied that the evidence of Mr. Maher was at best misleading, and that if he had known when cross-examining Mr. Maher that he had at one time been secretary of AIB Mortgage Bank, he would have cross-examined Mr. Maher "*in relation to sale agreements believed to exist…".*

42. Let me say at once that it was very clear to me that Mr. Maher was a wholly truthful witness who gave evidence to the best of his knowledge and ability. Apart from the fact that the first named defendant's theory in relation to the sale of the mortgages was not pleaded and was completely unsubstantiated, it ignores the fact that AIB has at all material times been the registered owner of the charges on the properties, up to and including the date of appointment of the receiver. The registration is, pursuant to s.31 of the Registration of Title Act 1964, conclusive evidence of AIB's title to the charge as of the date of the appointment. The first named defendant's theory as to the possible sale of the mortgages, or his mistaken view of the level of candour of the plaintiff or AIB, do not provide any basis for impugning the receiver's right to the reliefs he seeks – even if the first named defendant had the standing to make such allegations.

43. It was suggested by the first named defendant that, as the plaintiff is not a trustee of the borrower – which the receiver acknowledged under cross-examination was the case – he had "*no powers to put the bank into possession that would facilitate a lawful sale of the property by a mortgagee in possession*" [written submissions, para. 34].

44. This appears to be an objection to the sale of the Lagan Road property after it had been held and ordered by Gilligan J. that the receiver was entitled to possession of both properties. This point is not pleaded by the first named defendant and forms no part of his case. In any event, there was no evidence before this Court as to how the sale of Lagan Road was effected, although it is clear that there was a judgment against Mr. Noone for in excess of €2m, secured by a mortgage which contained at Clause 8 thereof a power of sale and a power to appoint a receiver.

45. The first named defendant argued that "*the repeal of inter alia sections 15 to 24 of the Land and Conveyancing Act, 1881 [sic] meant that there was no provision in Statute which allowed for the appointment of the plaintiff as receiver*" [written submissions, para. 36].

46. This submission is misconceived. The Land and Conveyancing Law Reform Act 2009 repealed ss. 15-24 of the 1881 Act and s.62(7) of the Registration of Title Act 1964. However, s.1 of the Land and Conveyancing Law Reform Act 2013 ('the 2013 Act') revived ss. 18-24 of the 1881 Act in respect of mortgages created before 1st December, 2009. It follows that, when the deeds of appointment were executed on 20th October, 2014 – s.1 of the 2013 Act being in force at the time – ss. 18-24 applied in respect of the mortgages.

47. The first named defendant then argues that the mortgage cannot be relied upon as giving AIB power to appoint a receiver "*where no contract exists which is signed by all the parties*". Each of the mortgages is signed by Mr. Noone, but not by the mortgagee. However, this does not affect the validity of the mortgage: see the judgment of Clarke J. (as he then was) in *Camiveo v. Dunnes Stores* [2015] IESC 43 at paras. 4.6-4.7.

48. At paras. 41-42 of his written submissions, the first named defendant makes the point that the facility letter on foot of which the monies were lent to Mr. Noone provided that those facilities were repayable on demand, and that "*there was no evidence before the court of any valid demand*". It is claimed that a demand from AIB's solicitors infringes para. 10.02 of the Lagan Road mortgage, which provides that "*…any such notice or demand shall be conclusive and binding upon the Mortgagor if signed by an officer of the Bank".*

49. Leaving aside the fact that it was for Mr. Noone to contest the validity of any demand to him for repayment, and not the first named defendant, it is clear that Clause 10.02 relates to the conclusive and binding nature of the demand if signed by an officer of the bank. It does not preclude a valid demand being made by an agent of the bank, such as its solicitor.

Conclusion

50. Even if my conclusion that the first named defendant has no standing to defend the proceedings were incorrect, it will be clear from the foregoing paragraphs that I am satisfied that none of the submissions impugning the validity of the appointment of the receiver has any validity. To the extent that they are relevant to this hearing, I concur entirely with the views expressed by Gilligan J. in his judgment in relation to the receiver's interlocutory application.

51. Given that events have moved on since that application, in that the receiver has taken possession of Slaney Road and Lagan Road has been sold, the parties may wish to address me as to nature of the orders to be made, including the question of costs. I will give the parties fourteen days from communication of this judgment to deliver brief written submissions in this regard. I intend at that stage to make final orders without further reference to the parties.