

Neutral Citation No: [2019] NICH 7

Ref: McB10961

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

Delivered: 17/05/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

ULSTER BANK LTD

Plaintiff/Respondent

and

HER JUING JAN

Defendant/Appellant

McBRIDE J

Application

[1] Ms Jan (“appellant”) appealed against the order of Master Hardstaff dated 1 December 2017 when he ordered that monies secured by deposit of title deeds and land certificates relating to 15 Glen Road and 70 Old Westland Road were well charged on the defendant/respondent’s interest in the said lands and premises and made an order for possession of the said lands and premises.

[2] The appellant was represented by Mr Smith of counsel and the plaintiff/respondent (“the Bank”) was represented by Mr Shaw QC and Mr Neeson of counsel. I am grateful to all counsel for their helpful skeleton arguments and ably argued oral submissions.

[3] The matter was listed and part-heard on 5 June 2018. It was adjourned to permit the Bank to file further additional affidavit evidence in relation to its standing to bring the action. Further affidavit evidence was filed on 15 October 2018 by Paul McCrissian and Paula Collins. The appellant replied by affidavit sworn on 16 November 2018.

[4] The matter was relisted on 26 November 2018. This hearing had to be vacated and the matter was then relisted for hearing on 12 April 2019.

Background

Re: Glen Road

[5] On 11 April 2002 the appellant deposited with the Bank title deeds relating to 15 Glen Road, Belfast, as security for all her individual liabilities direct or collateral present or future.

[6] On 13 June 2013 the Bank wrote to the appellant demanding repayment of the principal sum and interest due on foot of a current account. As of 13 June 2013 the sums due and owing were £1,442,327.61. These sums related to a number of loan account and overdraft accounts.

[7] Glen Road consists of four units. Two units are unoccupied. One unit is occupied by Paul Price trading as Pizza Italy and the other is occupied by Mrs Tang trading as Skylight Chinese Takeaway.

[8] The Bank issued an Originating Summons on 11 March 2014 seeking the following relief:-

“1. A declaration that by virtue of the deposit of the title deeds mentioned in the first schedule hereto the sum of £991,584.25 together with such further interest as accrues due and the plaintiff’s costs of action are well charged on the interest of the defendant in the premises described in the second schedule.

2. Alternatively an account of what is due to the plaintiff by the defendant for principal and interest due under and by virtue of the equitable mortgage and for the plaintiff’s costs of the action and a declaration that the sums found to be due are well charged on the interest of the defendant in the lands and the premises.

3. An order that in default of payment by the defendant to the plaintiff of the said principal, interest and costs with further interests on the principal sum due until date of payment at the rates of interest as detailed in paragraph 1 hereto within the time specified by the court that the premises be sold in such manner as the court may direct and for that purpose the defendant do deliver up possession of the lands and premises to the plaintiff and that all necessary parties shall join in the execution of the assurance or assurances to the purchasers thereof.”

[9] As of 22 August 2016 the total for principal and interest secured by the equitable mortgage was £882,577.69.

Re: 70 Old Westland Road, Belfast

[10] The appellant deposited with the Bank the land certificate in respect of 70 Old Westland Road, Belfast as security for all of her individual liabilities direct or collateral present or future.

[11] On 9 April 2009 certain facilities were afforded to the appellant including two demand loans for £400,000 and £375,000 respectively.

[12] An unexecuted charge dated 10 August 2007 in respect of the lands at 70 Old Westland Road, Belfast was entered into between the appellant and the Bank. This was registered in the Land Registry on 3 January 2008.

[13] On 13 June 2013 the Bank wrote to the appellant demanding repayment of principal and interest due on the loan and overdraft accounts totalling £1,040,746.48.

[14] The lands comprised an overgrown site. A dwelling which had previously existed on the site was destroyed by fire and subsequently demolished.

[15] As of 22 August 2016 the amount due and owing was £882,577.69.

[16] By Originating Summons dated 11 March 2014 the Bank sought the following relief:

“1. A declaration that by virtue of the deposit of the land certificate and mortgage mentioned in the first schedule hereto the total of £991,584.55 together with such further interest as accrues due and the plaintiff’s costs of the action are well charged on the interest of the defendant in the premises described in the second schedule.

2. Alternatively an account of what is due to the plaintiff by the defendant for principal and interest due under and by virtue of the equitable mortgage and for the plaintiff’s costs of the action and a declaration of the sums found to be due are well charged on the interest of the defendant in the lands and the premises.

3. An order that in default of payment by the defendant to the plaintiff of the said principal, interest and costs with further interest on the principal sum due until date of payment at the rates of interest as detailed in

paragraph 1 hereto within the time specified by the court that the premises be sold in such manner as the court may direct and for that purpose the defendant do deliver up possession of the lands and premises to the plaintiff and that all necessary parties shall join in the execution of the assurance or assurances to the purchasers thereof.”

[17] By affidavit sworn on 24 February 2017 the appellant averred inter alia that:

- (a) She believed that the security given related to a specific loan and that it was unreasonable for the Bank to demand repayment of all the facilities.
- (b) That she was retired and in receipt of pension credits. She had no savings and therefore no way of paying the outstanding sum claimed.
- (c) She put the Bank on strict proof regarding deposit of the title deeds/land certificates and its compliance with the Order 88 requirements.
- (d) She made an offer to pay the liabilities which she averred was rejected.
- (e) She stated that her siblings may have an equitable interest in the Glen Road premises.
- (f) The demand letter did not specify the reason for the loan being called in.
- (g) The terms relating to unfairness in the Consumer Credit Act may apply.
- (h) The facility letter was unsigned and therefore there was no binding contract.

[18] By affidavit sworn on 12 July 2017 Paul McCrissian replied to the appellant’s affidavit. By further affidavit sworn on 18 September 2017 the appellant set out details of her siblings’ interests in the Glen Road property.

[19] On 1 December 2017 Master Hardstaff ordered that the money secured by the deposit of the title deeds and land certificates in respect of Glen Road and Old Westland Road were well charged on the defendant’s interest in the said lands and premises and further ordered that in default of the appellant paying the sums due to the Bank, that the appellant was required to forthwith deliver to the plaintiff possession of the said lands and premises.

[20] On 5 December 2017 the appellant appealed the Master’s orders.

The Appellant's Submissions

[21] At the hearing Mr Smith on behalf of the appellant accepted that the Bank held an equitable mortgage in respect of each property and he accepted that the appellant was indebted to the Bank. He relied on three grounds of appeal as follows:

- (a) Errors in the calculation of the quantum/formal demand.
- (b) The offer made by his client.
- (c) The standing of the Bank.

[22] Although the appellant accepted a level of indebtedness and in particular accepted that two of the facilities were repayable on demand the appellant averred that there was no evidence before the court that the third facility was repayable on demand. Mr Smith therefore submitted that the orders for possession ought not to have been made in circumstances where the Bank could not precisely quantify the debt due and owing.

[23] Secondly, he submitted that the appellant had offered to pay £135,000 to purchase both Glen Road and Old Westland Road and in those circumstances the court ought to decline to make possession orders.

[24] Finally, he submitted that the Bank lacked standing to bring the applications. The case was initially adjourned to permit the Bank to file further affidavit evidence in respect of its standing. At the resumed hearing on 12 April 2019 Mr Smith advised the court that he was no longer pursuing this argument and formally conceded that the Bank had standing to bring the applications.

Bank's Submissions

[25] Mr Neeson on behalf of the Bank submitted that:-

- (a) Both properties were secured by way of equitable mortgage in favour of the Bank for facilities advanced by it to the appellant and which facilities were repayable on demand.
- (b) The Bank had demanded repayment, the appellant had defaulted and accordingly the Bank was entitled to its orders for possession.
- (c) The court had a discretion to grant a stay but he submitted that such an application ought to have been made to the Chancery Master. In any event he submitted that such an application lacked merit given that the Administration of Justice Acts did not apply and therefore the exercise

of discretion would only be exercised in rare and compelling circumstances.

- (d) In respect of the calculation of quantum he submitted that the appellant did not dispute the sums claimed in her affidavit evidence. He further submitted that the sums set out in the affidavit as filed by the Bank were based on the relevant statements which were exhibited. He averred that as appeared from the loan facilities two were repayable on demand and the third was repayable in the event of default of repayment of their facilities.
- (e) In respect of the offer to purchase both properties he submitted that such an offer was not sufficient to discharge the entirety of the appellant's debt.

Consideration

[26] To obtain an order for possession it is necessary for the Bank to establish that the lands are well charged; that there is an outstanding liability and that all the Order 88 procedures have been adhered to. Thereafter the court must consider whether it should exercise its discretion to stay or suspend any order for possession.

[27] The undisputed evidence of all the parties was that equitable mortgages existed in respect of both properties in favour of the Bank.

[28] Secondly it was accepted that the appellant was indebted to the Bank although the amount of indebtedness was disputed. I am satisfied that the facilities granted to the appellant were repayable on demand as appears from the facility letter. A formal demand was sent to the appellant. She failed to satisfy the debt and accordingly I find that in those circumstances the Bank was entitled to seek a possession order.

[29] Whilst there may be a dispute as to the precise amount due and owing this court is only concerned with the question whether the Bank is entitled to an order for possession. The Bank is not seeking a monies judgment. In the event the Bank seeks an account of what is due and owing this matter will at that stage be considered by the Master.

[30] In respect of the exercise of my discretion I note that the premises are not dwelling houses. It is only in rare and compelling circumstances that the court will exercise its discretion to stay or suspend a possession order when the Administration of Justice Acts do not apply. The appellant has submitted that she has made an offer of £135,000 to buy both the properties. This figure is nowhere near sufficient to meet the debt that she owes. Further, she is unable to pay any instalments as she is retired and on pension credits. She has no savings.

Accordingly, there is no basis upon which this court should impose a stay of the possession order. Accordingly, I refuse to stay or suspend the possession order.

Conclusion

[31] I therefore dismiss the appeal. I refuse to stay or suspend the order. I will hear counsel in respect of costs.