

Neutral Citation No: [2020] NICH 9

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

Ref: McB11171

Delivered: 14/05/2020

2019/025205

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

—————
MARTIN KEVIN McGEE

Appellant;

and

MORAG FINANCE LTD

First Respondent;

and

AMBER HOMELOANS LTD

Second Respondent.

—————
McBRIDE J

Application

[1] By Notice of Appeal dated 8 March 2019 the appellant appeals against a decision of the Registrar of Titles in Northern Ireland issued on 12 February 2019 whereby he dismissed the appellant's appeal on the basis that his Notice of Appeal, dated 6 February 2019, was received outside the prescribed statutory 21 day period.

[2] For reasons which will appear hereafter, I intend to treat the appellant's Notice of Appeal as an appeal against the decision of the Registrar of Titles dated 16 January 2019 where he dismissed the applicant's Notice of Objection to an Application for the Registration of Transfer of Charges from the second respondent to the first respondent, in respect of lands situate and known as 9 Clontycarty Lane, Tynan, Armagh, County Armagh and contained within Folio 30147 County Armagh ("the property").

[3] The Notice of Appeal originally named the Land Registry Northern Ireland as the respondent. With the agreement of all the parties, Morag Finance Ltd and Amber Homeloans Ltd were substituted as the respondents.

[4] The appellant appeared as a litigant in person. Mr Boyd was appointed by Huddleston J to act as his McKenzie Friend. The respondents were represented by Mr Gibson of counsel.

Background

[5] The property comprises a dwelling house owned and occupied by the appellant and his wife Bernadette Patricia McGee.

[6] The appellant and his wife were originally registered as full owners of the property on 3 April 2016. On 7 July 2016 they were registered as full owners as tenants in common of an undivided half share in the property.

[7] As appears from the Land Certificate a number of charges are registered against the property. In particular a charge was registered on 3 October 2007 in favour of the second respondent for all monies secured by Document 2007/551007/B.

[8] Document 2007/551007 is a Mortgage Deed dated 17 July 2007 which was entered into between the appellant and his wife and Amber Homeloans Ltd.

[9] In the Mortgage Deed the lender is described as Amber Homeloans Ltd and the borrowers are described as Martin Kevin McGee and Bernadette Patricia McGee. The property is described as Folio 30147 County Armagh, 9 Clontycarty Lane, Tynan, Armagh, County Armagh.

[10] The Mortgage Deed stated that it incorporated the mortgage clauses set out in the schedule. The schedule contained a number of material clauses including clauses requiring repayment of the monies advanced and clauses setting out the lender's powers in the event of default by the borrowers. In particular the schedule contained clause 12 which provided as follows:

“12.1 The lender may at any time while any part of the principle sum and additional borrowing remain owing to the lender:

12.1.1 Transfer charge or otherwise dispose of the benefit of all or any part of the debt due from the borrower to the lender and the mortgage and any other security held by the lender to any third party whether or not a building society or company associated with a building society without reference to or obtaining the consent of the borrower.”

[11] In accordance with the mortgage offer and the Mortgage Deed, Amber Homeloans Limited advanced to the appellant and his wife the principal sum set out

in the mortgage offer and the appellant and his wife as beneficial owners charged the property in favour of Amber Homeloans Limited with the payment of all monies due to it by the appellant and his wife.

[12] In the events which happened the appellant and his wife defaulted in repayment and Amber Homeloans Limited brought repossession proceedings. It was granted an order for possession on 14 December 2009 (“the possession proceedings”).

[13] Thereafter, the appellant and his wife made a number of applications to the court including a number of applications to stay the repossession proceedings. In the course of one stay application, the appellant swore an affidavit on 29 June 2011 in which he accepted that he and his wife were in arrears of approximately £33,000 in respect of the property.

[14] On 7 April 2017 Amber Homeloans Limited entered into a mortgage sale agreement with the first respondent. This was a multiple portfolio transfer of charges, which included the charge on the subject property.

[15] By letters dated 12 October 2017 and 16 October 2017 the appellant and his wife were advised about the change in ownership of the mortgage charge.

[16] On 12 December 2017 Tughans, solicitors on behalf of Morag Finance Limited lodged a transfer application in the Land Registry in relation to the multiple portfolio transfer of charges from Amber Homeloans Limited to Morag Finance Limited, seeking to have the first respondent registered as the legal owner of the charges set out in a Deed of Transfer dated 10 November 2017.

[17] To effect the registration of the charges, Tughans, solicitors lodged with the Land Registry Form 100E entitled ‘Application for Registration’ which was dated 6 December 17, (received by Land Registry on 12 December 2017) and Form 32 (precedent 17N) entitled ‘Land Registry of Northern Ireland, Transfer of Charges’ which was dated 10 November 2017 and was executed as a Deed. The Transfer of Charges Deed dated 10 November 2017 was entered into between the first and second respondents. Under it the second respondent transferred the multiple charges set out in the mortgage sale agreement, which included the charge affecting the subject property, to the first respondent.

[18] On 17 January 2018 the appellant lodged a Notice of Objection to the transfer application in the Land Registry. His Notice of Objection stated as follows:

“Take notice, we do not consent to the application lodged 12/12/2017, being recorded to the Folio 30147 of the estate of Martin Kevin McGee, our reasons for objections are:

1. The party known as Morag Finance Ltd has not provided any evidence of fact that they have a right to have their name registered on this title.
2. There is no evidence of fact that Morag Finance Ltd has lawful standing in this matter.
3. The application to register Morag Finance Ltd has been challenged in the High Court of Northern Ireland, Chancery Division, Case Ref 2009/023383.
4. We believe there must be in existence a Deed of Transfer of Ownership between Amber Homeloans Ltd and Morag Finance Ltd, we require sight of same before registration of title change.
5. Precedent 17N – Transfer of Ownership charge, 2R Form 32, which solicitor attested this application 2017/881805, Pauline Walker of Tughans Solicitors Belfast.
6. We believe, Tughans Solicitors, Belfast are not on record in the Royal Courts of Justice Northern Ireland Chancery Division for Amber Homeloans Ltd and Morag Finance Ltd, so they have no legal standing or locus standi to file an application with Land Registry of Northern Ireland to transfer ownership of charge from Amber Homeloans to Morag Finance Ltd. An application in this matter can only be made by Valerie Gibson and Eversheds Sutherland Belfast, not by Pauline Walker of Tughans Solicitors Belfast.”

[19] After the Application for Transfer of Registration of the Charges was made to the Land Registry the first respondent changed solicitors and instructed Eversheds in place of Tughans. On 19 January 2018 the first respondent applied to the Master (Chancery) to be substituted as the plaintiff in place of the second respondent in the possession proceedings. On 5 April 2018 Eversheds took over conduct of the transfer application in the Land Registry.

[20] The Chancery Master indicated that he would not deal with the application to substitute the first respondent in the possession proceedings in place of the second respondent until after the Land Registry had determined the Notice of Objection to Registration of the Charges. At the same time the Land Registry refused to deal with

the application for registration of the charges and the Notice of Objection to Registration of the Charges on the basis that High Court proceedings were pending before the Master.

[21] On 21 December 2018, to end the impasse and to deal with one of the points of objection raised by the appellant in his Notice of Objection, namely the pending High Court proceedings, the Master struck out the first respondent's application to be substituted as the plaintiff in the possession proceedings and he made no order as to costs. On the same date, the Master struck out the appellant's application for a stay of enforcement of the possession order dated 14 December 2009.

[22] On 21 November 2018 the appellant lodged with the Land Registry an affidavit dated 21 November 2018 and enclosed supporting documentation which included a 'Deed of Trust "Private Trust" Private'.

[23] On 16 January 2019 the Deputy Registrar on behalf the Registrar of Titles considered all the documentation lodged by the parties and concluded that as the appellant had not shown cause for objection to the transfer the applicant's Objection to the registration would be dismissed. Written notification of this decision was forwarded by the Deputy Registrar of Titles to the applicant by first class post on 16 January 2019.

[24] The written notification dated 16 January 2019 stated as follows:-

"Dear Sir/Madam

**Objection to Application (ref 2017/881805)
Transfer of Charge**

In relation to the objection of Martin Kevin McGee to registration of matter 2017/881805 lodged by Tughans solicitors and now under carriage of Eversheds on behalf of Morag Finance Limited, the Deputy Registrar has consider documents lodged in both cases and in particular:

- Deed of Trust Martin Kevin to Ian Geoffrey Moore dated 3 August 2017.
- Notice of Objection to application 17 January 2018 by Martin Kevin McGee.
- Transfer of Charges from Amber Homeloans to Morag Finance Limited dated 10 November 2017.

As the objector has not shown any valid cause for objection the objection (2018/207363) shall therefore be dismissed and the registration of matter 2017/881805 will be dealt with accordingly. As a hearing is not required in determination of this matter the fee lodged will be refunded in due course.”

[25] On 6 February 2019 an email was received by Land Registry from an individual referred to as Eamonn on behalf of the appellant attaching a Notice of Appeal stating that the appellant wished to appeal the Registrar’s decision in relation to the transfer application to the High Court.

[26] On 12 February 2019, the Land Registry corresponded with the appellant advising him that he had a right of appeal to the High Court. The letter further stated that the Notice of Appeal attached to email dated 6 February was out of time as it was received outside the prescribed 21 day term for appeal. The letter further advised that if the appellant had separately submitted an appeal to the High Court and which had been accepted by the High Court then he should confirm this in writing to the Land Registry within 20 working days, failing which the Land Registry would proceed with the transfer application 2017/881805.

[27] On 8 March 2019 the appellant lodged a Notice of Appeal to the High Court. As indicated earlier this Notice of Appeal sought to appeal the decision of the Registrar dated 12 February 2019, namely the decision of the Registrar that the Notice of Appeal dated 6 February 2019 was out of time. The Notice of Appeal did not appeal the Deputy Registrar’s decision dated 16 January 2019 in which he dismissed the appellant’s Notice of Objection to registration of the charges.

[28] The appellant filed a Statement of Fact dated 25 March 2019 in which he stated that he received the decision of the Deputy Registrar of Titles on 19 January 2019 and averred his Notice of Appeal was not out of time.

[29] On 28 June 2018 the court directed that the Notice of Appeal dated 8 March 2019 was outside the statutory time limit for appeal, and ordered the appellant to lodge and serve an application to extend the time to bring the appeal and further ordered him to file an affidavit setting out the reasons for delay.

[30] On 11 July 2018 the appellant applied for an extension of time to appeal. This was accompanied by an affidavit sworn on 11 July 2018 which averred as follows:

“We believe we were within the time limit of 21 days when we submitted our appeal to the High Court of Justice in Northern Ireland against the decision made by K Weston for Registrar of Titles in Northern Ireland issued on 12 February 2019 whereby it was decided that

our Notice of Appeal dated 6 February 2019 was received outside of the prescribed 21 day term for appeal.

2. We believe Amber Homeloans Ltd do not have the right to transfer the chose in this action we will provide evidence of our allegation by way of a separate Writ of Summons.”

[31] The appellant on 18 September in a reply to a skeleton argument filed on behalf of the respondents, stated that his appeal was within the prescribed time limit. The appellant also served a Statement of Truth in which he stated the trust property was in the possession of the trustee Ian Geoffrey doing business as MOORE under the terms of the Express Trust evidenced by special delivery tracking No BH 236488381 3GB.

[32] The case was listed and heard on 18 December 2019. The court had the benefit of skeleton arguments filed by all parties and oral submissions. At the conclusion of the hearing the court permitted the appellant, if he wished to file further written submissions on or before 10 January 2020 and gave the respondent liberty to respond on or before 17 January 2020.

[33] In the event no further submissions were filed save that on 31 January 202 the appellant made an application “for privacy (in equity) under Order 32 Rule 17 and 18 of the Rules of the Court of Judicature (NI) 1980 in the matter of Amber Homeloans Limited and Morag Finance v Martin Kevin McGee”. The application was accompanied by a document entitled “Defence” in which the applicant stated that he had tendered payments to “the sentient man Ian Geoffrey; doing business as (dba) MOORE and the sentient man Andrew Walter doing business as (dba) NELSON...as trustees for the trust under the terms and conditions of the Express Trust evidenced by special delivery tracking number BH 2364 8382 7GB...” The application was accompanied by a second document entitled “Affidavit Statement of Truth” which stated the trust property was in possession of Ian Geoffrey and Andrew Walter. The appellant further lodged a Deed of Trust Private Trust and a Memorandum of Trust.

[34] On 18 February 2020 the appellant issued a summons to amend his Defence and counterclaim under Order 20 rule 5.

CONSIDERATION

Preliminary Issue - Time Point

[35] Section 6 of the Land Registration Act (Northern Ireland) 1970 provides as follows:

“1. Any person aggrieved by any order of the Registrar, or by any decision of the Registrar other than a decision on a matter expressly stated to be in his discretion, may appeal to the High Court, and that Court may annul or confirm, with or without modification, the order or decision.”

[36] Order 55 Rule 14(2) provides that any appeal must be lodged within 21 days from receipt of the decision.

[37] The decision of the Registrar to dismiss the appellant’s Notice of Objection was received on either 19th or 21st January 2019. The Notice of Appeal was not lodged in the High Court until 8 March 2019. The appeal to the High Court was therefore out of time.

[38] The appellant did however lodge a Notice of Appeal dated 6 February 2019 to the Registrar. This Notice of Appeal appears to have been served within the prescribed statutory 21 day period.

[39] Initially the time point was taken by the respondents, but at the hearing, Mr Gibson of counsel indicated that they were no longer taking this point. In these circumstances I consider that the appeal has either been served within time, or in the alternative, if it has not been served within the statutory time period, I extend time for lodgement of the appeal.

Amendment of Notice of Appeal

[40] The Notice of Appeal in this case refers only to the Registrar’s decision dated 12 February 2019 (namely the decision that the appeal was out of time). As indicated above, I intend to treat the Notice of Appeal as an appeal against the substantive decision of the Registrar dated 16 January 2019, when he dismissed the applicant’s Notice of Objection to registration of the charges and I therefore amend the Notice of Appeal accordingly.

Relevant Legal Provisions regarding Registration of Transfers of Land and Charges

[41] Section 34 of the Land Registration Act (Northern Ireland) 1970 provides for transfers of registered land:

“(1) a registered owner of any land may transfer the land or any part thereof.

(2) There shall be executed on any such transfer a document in the prescribed form, or in such other form as is approved or allowed by the Registrar.

(3) Any such transfer shall be completed by the registration of the transferee as owner of the land, but, until such registration, the document shall not operate to transfer the land.

(4) On registration of a transferee of any land as full owner of the land, the document of transfer shall operate as a conveyance by deed within the meaning of the Conveyancing Acts, and there shall be vested in the registered transferee the land transferred...

...

(8) Land Registry Rules may provide for the modification of the provisions of this section in its application to the transfer of charges."

[42] Rule 67 of the Land Registry Rules (Northern Ireland) 1994 provides for the transfer of charges. It states as follows:

"67.-(1) A transfer of a charge by the registered owner thereof shall be in Form 32 with such modifications as the case may require.

(2) On registration of the transferee as owner of the charge, the document of transfer shall operate as a conveyance by deed within the meaning of the Conveyancing Acts and the transferee shall -

(a) have the same title to the charge as, under the 1970 Act, a registered transferee of land other than a charge would have to such land under a transfer for valuable consideration or, as the case may be, without valuable consideration; and

(b) have, for enforcing his charge, the same rights and powers in respect of the land as if the charge had been created in his favour originally;

And the provisions of section 34(4) of the 1970 Act in its application to the transfer of charges are modified accordingly."

The Appellant's Submissions

[43] The appellant set out his reasons for objecting to the registration of the charges in his Notice of Objection to Registration of Transfer of Charges; in his affidavit dated 11 July 2019 and in various accompanying documents including a Deed of Trust.

[44] The Notice of Objection to Registration of Transfer of Charges, in summary, stated that:

- (a) Morag Finance Limited had no right to be registered as the owner of the charge.
- (b) There were pending High Court proceedings.
- (c) There was no Deed of Transfer between Amber Homeloans Limited and Morag Finance Limited.
- (d) Tughans did not have locus standi to bring the application.

[45] The appellant's affidavit dated 11 July 2019 averred as follows:

"Amber Homeloans do not have the right to transfer the chose in this action".

This averment appears to be based on the accompanying documents which included a Deed of Trust which the appellant relied upon as proof he had tendered payment because the Deed of Trust stated the trust property was in the possession of Ian Geoffrey MOORE and Andrew Walter NELSON by reason of an Express Trust.

[45] The court also made provision for the appellant to file written skeleton arguments. The applicant filed a skeleton argument on 18 September 2019 which dealt with the time point only. It did not elaborate in respect of the substantive issues save to repeat that Amber Homeloans Ltd did not have the right to transfer the chose in this action and indicated that a Writ of Summons would be lodged.

[46] In the event no writ was issued and therefore at the conclusion of the case the court gave liberty to the appellant to file further submissions by 10th January 2020 and also gave the respondent liberty to reply to these submissions by 17th January 2020. The only documents subsequently lodged by the appellant were the documents set out in paragraphs [33] and [34] above.

The Respondent's Submissions

[47] Mr Gibson on behalf of the respondent submitted that the first respondent was entitled to be registered as owner of the charge because the charge has been

assigned to it by Amber Homeloans under the Transfer Deed and the first respondent had made the appropriate application to be so registered in accordance with the Land Registry Rules. He further submitted that the applicant had raised no valid grounds of objection to registration, whether in law or by reason of an irregular procedure, and accordingly the first named respondent was entitled to be registered as the charge holder.

Consideration - Registration of Transfer of Charges

[48] On 7 April 2017 the second respondent sold a portfolio of multiple charges owned by it to the first respondent by way of a mortgage sale agreement. This portfolio included the charge attached to the subject property. As appears from section 34 Land Registration Act (NI) 1970 a registered owner of land or charge may transfer registered land or a charge registered in his name to a third party and therefore absent any legal or statutory provision to the contrary the second respondent was entitled to sell the charge attached to the property. The appellant has not raised any legal or statutory provision which prevented the second respondent selling the charge attached to the property. At one point the appellant appeared to state that the second respondent required his permission to transfer the charge attached to the property. I am satisfied however that the second respondent was entitled to transfer the charge over the property without the consent of the appellant as clause 12 of the Mortgage Deed expressly provided that the consent of the borrower was not required to effect a transfer of the charge.

[49] After sale of the charge by way of the mortgage sale agreement the first respondent applied to be registered as the new owner of the charges comprised in the mortgage sale agreement. This was because no doubt the parties were aware of the provisions of Section 34(3) which states that any transfer of registered land has to be completed by the registration of the transferee as owner of the charge. Although section 34(3) goes on to provide that until registration the transfer document does not operate to transfer the land Wallace's view expressed in Land Registry Practice in Northern Ireland at page 11-12 is that notwithstanding the provisions of section 34(3) the transferee becomes the owner of an equitable estate. Nonetheless, to become the legal owner of the estate the transfer has to be registered in the Land Registry. To this end the first and second respondents completed a Transfer Deed in Form 32 (precedent 17N) dated 10 November 2017 under which the second respondent transferred legal ownership of the portfolio of multiple charges to the first respondent. This Transfer Deed was then submitted along with Form 100 to the Land Registry so that the transfer in ownership of the charges could be registered in the Land Registry.

[50] Rule 67 of the Land Registry provides that the transfer of a charge shall be in Form 32 with such modifications as the case may require. In the present case the transfer of charges was completed using precedent 17N which is a variation of Form 32.

[51] The Land Registry website provides the following guidance in respect of transfer of ownership of charges. It states as follows:

“The owner of a charge may transfer his interest in that charge in accordance with Rule 67, by deed (Precedent 17.N). The documents to be lodged are:

- Precedent 17.N - Transfer of ownership of a charge
- LR form 100 and the registration fee.”

[52] I am satisfied that the first respondent complied with the provisions of Rule 67 of the Land Registry Rules (Northern Ireland) 1994 and in particular the first respondent lodged the correct documents necessary to obtain registration of the transfer of the charges.

[53] There is nothing in the Land Registration Act (NI) 1970 or the Land Registry Rules which sets out any basis upon which the Registrar can refuse registration. Rather it appears that if the application is made in the prescribed forms in accordance with the Rules and there is no legal or statutory provision which would prevent registration, the Registrar ought to register the transfer. Ultimately, the role of the Registrar is to maintain the Land Register to ensure that it reflects the ownership of registered land.

[54] I am satisfied that there are no legal grounds or any statutory provision which would have prevented registration of the charges in this case. Further, I am satisfied that none of the grounds of objection to registration of the transfer of charges set out by the appellant has any merit in fact or law. I am satisfied that the first respondent did have lawful standing to apply to the Land Registry to be registered as owner as a result of the mortgage sale agreement and the subsequent Transfer Deed dated 10 November 2017. Secondly, I am satisfied that there were no pending High Court proceedings which prevented the Registrar effecting the registration and dismissing the objection to transfer. Thirdly, I find that it does not matter which solicitor made the application provided they did so on the instructions of the first respondent. I am further satisfied that an applicant can change solicitors during the course of an application and this does not render the application defective. Fourthly, I find that the appellant’s submissions that the document entitled Private Trust proved payment had been tendered and the property was in the hands of trustees, to be legally meaningless and devoid of any merit in law or fact and therefore I reject any submission that either the second respondent did not have the right to transfer ownership of the charge.

[54] In all the circumstances I am satisfied the Deputy Registrar of Titles was correct in finding that the appellant had shown no valid cause for objection and I therefore confirm his decision to dismiss the Notice of Objection lodged by the appellant dated 17 January 2018.

[55] I further dismiss the appellant's application dated 13 January 2020 seeking a hearing in private in relation to this matter on the basis that the case had already been heard on 18 December 2019. I also dismiss his application to amend his Defence and Counterclaim as the court has already adjudicated upon these matters.

[56] I will hear the parties' arguments, by way of written submission, in respect of costs.