

THE HIGH COURT

2015 No. 183 SP

BETWEEN

PERMANENT TSB PLC
(FORMERLY IRISH LIFE & PERMANENT PLC)

PLAINTIFF

AND

GERRY BURNS
ANN BURNS

DEFENDANTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 27 January 2020

INTRODUCTION

1. This judgment is delivered in respect of two procedural applications made in connection with the enforcement of orders for possession. The orders for possession relate to three parcels of land which are owned by the Defendants (*"Mr & Mrs Burns"*). The title to one of the parcels is registered under the Registration of Title Act 1964; the title to the other two parcels is unregistered.
2. The orders for possession had been made on the basis of an indenture of mortgage and charge (*"the Mortgage"*) which had been entered into between the Plaintiff, Permanent TSB plc (*"PTSB"*), as mortgagee, and Mr & Mrs Burns, as mortgagors. The ownership of the mortgagee's interest in the Mortgage (and in the underlying loan facility) has since been transferred from PTSB to Start Mortgages DAC (*"Start Mortgages"*).
3. Start Mortgages has applied for the following two orders in consequence of this transfer of ownership. First, an order is sought pursuant to Order 17, rule 4 of the Rules of the Superior Courts to the effect that the within proceedings should be carried on as between Start Mortgages and Mr & Mrs Burns. Secondly, an order is sought pursuant to Order 42, rule 24 granting Start Mortgages liberty to issue execution in respect of the orders for possession.
4. These applications have been made on notice to Mr & Mrs Burns. This is so notwithstanding that Order 17, rule 4 appears to envisage that such an application be made on an *ex parte* basis. The two applications were heard together on Monday 16 December 2019, and judgment reserved until today's date. Mr & Mrs Burns represented themselves at the hearing in December. The applications were opposed by them primarily on the grounds (i) that the deponent on behalf of Start Mortgages "cannot claim to have first hand knowledge of any of the events" and that his evidence is hearsay; and (ii) that they never consented to the transfer of the Mortgage to Start Mortgages DAC and that the clause which allowed such an assignment is an "unfair term".
5. For the reasons set out in this judgment, I have concluded that Start Mortgages has discharged the onus of proof upon it, and that it is entitled to the orders sought by it in all the circumstances of the case.

PROCEDURAL HISTORY

6. The within proceedings were instituted by way of Special Summons on 2 July 2015. The Special Summons had been amended subsequently by order of the High Court dated 14 March 2016, to correct an error in the spelling of the Defendants' address ("Killeshranda" instead of "Killesandra").
7. The proceedings relate to three parcels of lands in Leitrim and Cavan, respectively. Title to one of the parcels is registered under the Registration of Title Act 1964, and an order for possession was sought pursuant to section 62(7) of the 1964 Act in respect of that parcel. Title to the other two parcels of land is unregistered.
8. The application for orders for possession had been grounded on the affidavit of Jacqueline O'Brien sworn herein on 8 July 2015. Ms O'Brien identified herself as a manager with PTSB, and averred that she made her affidavit on behalf of and with the authority of PTSB and from an examination of the books, records and accounts of PTSB, and, in particular, the accounts held by the Defendants. The affidavit exhibited *inter alia* the indenture of mortgage and charge in favour of PTSB entered into by Mr & Mrs Burns on 23 September 2007.
9. The High Court (Ní Raifeartaigh J.) made orders for possession in respect of the three mortgaged properties on 16 January 2017. Mr & Mrs Burns, as is their right, brought an appeal against the High Court order to the Court of Appeal. That appeal was dismissed by the Court of Appeal (Irvine, Whelan and Baker JJ.) on 28 November 2018. Thereafter, Mr & Mrs Burns applied to the Supreme Court for leave to appeal to that court. Leave to appeal was refused by Determination dated 6 June 2019 (*Permanent TSB v. Burns* [2019] IESCDET 116).
10. Given the nature of the arguments which have been relied upon by Mr & Mrs Burns in opposition to Start Mortgages' applications, it is to be noted that one of the grounds upon which leave to appeal had been sought is the alleged failure of PTSB to have produced the original loan offer letter signed by Mr & Mrs Burns. This argument had been rejected by both the High Court and the Court of Appeal.
11. In summary, therefore, these proceedings have thus reached the stage where all rights of appeal as against the substantive orders, i.e. the orders for possession, have been exhausted. The only issue which remains outstanding is the enforcement of the orders.

APPLICATION TO MAKE START MORTGAGES A PARTY

12. The application to make Start Mortgages a party to the proceedings has been made pursuant to Order 17, rule 4 of the Rules of the Superior Courts. The Order reads as follows.
 4. Where by reason of death, or any other event* occurring after the commencement of a cause or matter and causing a *change or transmission of interest or liability*,* or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a

party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained ex parte on application to the Court upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

*Emphasis (italics) added.

13. The interpretation of Order 17, rule 4 has been considered in a number of recent judgments. The Court of Appeal addressed two aspects of the wording of the Order as follows in *Stapleford Finance Ltd. v. Lavelle* [2016] IECA 104. First, it was held that the phrase “any other event”, in the opening sentence of the Order, included events such as the assignment of loans and a chose in action. An “event” was not confined to an extraneous event (such as death or bankruptcy), but also embraced an event such as a contract for the sale of loans and mortgages.
14. Secondly, it was held that the phrase “change ... of interest” was not confined to an interest in land, but embraced an assignment of a chose in action. It was further held that there was no distinction in this regard between the assignment of a chose in action and the assignment of an *existing* cause of action. The Court of Appeal held that the legislative intent of the Supreme Court of Judicature Act (Ireland) 1877 would be defeated if it were not possible to substitute the assignee as a party.

“Since the Supreme Court of Judicature Act (Ireland) 1877 it has been possible legally to assign a chose in action. The intent of the statute is to do away with the formal necessity of joining the assignor in any proceedings brought by the assignee to enforce the chose in action. The legislative intent is defeated if the rules of court do not provide for of the substitution of the assignee of the chose in action as plaintiff in proceedings commenced by the assignor.”
15. At a later point in the judgment, the Court of Appeal observed that a requirement for an assignee to have to commence new proceedings (as opposed to its being made a party to existing proceedings taken by the assignor) could lead to very considerable wasted time, effort and expense. It could also present difficulties in respect of the Statute of Limitations.
16. The question of whether Order 17, rule 4 can be invoked in proceedings seeking the recovery of lands by way of an order for possession has been expressly considered in *Danske Bank v. Macken* [2018] IEHC 356 and *Permanent TSB v. Doheny* [2019] IEHC 414. In each instance, the High Court accepted that it is open to the transferee under a deed of transfer to apply to be made a party to possession proceedings which had previously been instituted by the transferor.
17. Mr & Mrs Burns did not appear to dispute this interpretation of the Order. Rather, the disagreement between the parties to the present case centres on the separate question of the nature and extent of the evidence which must be adduced in support of an application

under Order 17, rule 4. This question has also been addressed in the case law. Before turning to consider that case law, however, it should be emphasised that the application in the present case has been made at a more advanced stage of the proceedings than had been the position in the cases opened to me. More specifically, the application has been made subsequent to the substantive hearing, and subsequent to the making of the orders for possession. A further point of distinction is that much of the case law relied upon involved proceedings by way of Summary Summons, rather than proceedings seeking to recover the possession of lands by way of Special Summons.

18. The leading judgment remains that of the High Court (Kelly J.) in *Irish Bank Resolution Corporation v. Comer* [2014] IEHC 671. The judgment was delivered in respect of an application by the purchaser under the sale of a bank's loan book to be substituted as plaintiff in existing proceedings. The sale was characterised as an assignment of a chose in action for the purposes of section 28 of the Supreme Court of Judicature Act (Ireland) 1877. Crucially, the application had been made *prior to* the substantive hearing of the proceedings. The High Court held that the legal test for such an interlocutory application is whether there is *prima facie* evidence that there has been (i) a valid sale of the underlying assets; (ii) a valid assignment of the chose in action; and (iii) a valid notice given. It was not necessary for the court to adjudicate, at that juncture of the proceedings, on the efficacy or validity of the assignment or the efficacy or validity of the notice. Those were matters to be determined at the substantive hearing.
19. The standard of proof to be met on an application to substitute a party which is made *subsequent to* the substantive hearing will be higher. This is because there will, by definition, be no further hearing at which these matters can be ventilated. Put shortly, the efficacy or validity of the assignment will have to be considered on the joinder application.
20. This distinction is explained as follows by the Court of Appeal in *McDermott v. Ennis Property Finance DAC* [2019] IECA 142.

"37. Where, as in the present case a substitution application is made after judgment has been granted, and where therefore there is no opportunity at trial to raise any issues in relation to the proofs adduced in support of the application, it seems to me that the *prima facie* test referred to by Kelly J. in *IBRC v. Comer* is not the correct test. In such cases the correct test is that applicable in civil proceedings generally, namely on the balance of probabilities. The evidence will nonetheless be adduced in the normal way in such applications by affidavit, and if necessary any deponent may be cross-examined on their affidavit as provided for by the Rules of the Superior Courts. But such applications remain purely procedural in nature, and there can be no question of such an application becoming in the nature of a mini-trial."
21. This is the approach to be applied in the present case, where, of course, the application is being made subsequent to the making of the orders for possession (16 January 2017).

EVIDENCE OF TRANSFER

22. The two applications presently before the court are grounded on an affidavit sworn by Mr Justin Nevin on behalf of Start Mortgages DAC dated 29 July 2019. Mr Nevin identifies himself as the "litigation manager" for Start Mortgages DAC, but goes on to explain that he is employed by Start Mortgages Holding Ltd., which he describes as the parent company and sole shareholder of Start Mortgages DAC. As discussed presently, Mr & Mrs Burns attach significance to the fact that Mr Nevin is not directly employed by Start Mortgages DAC.
23. Mr Nevin sets out his means of knowledge as follows.
- "1. I am the Litigation Manager for Start Mortgages Designated Activity Company (the 'Applicant') and employed by Start Mortgages Holding Limited ('SMHL') which is the parent company and sole shareholder of Start Mortgages Designated Activity Company. SMHL manages and services all loans held by the Applicant. I make this affidavit on the Applicant's behalf and with its authority, from facts within my own knowledge and from a diligent perusal of its books and records, save where otherwise appears and where so otherwise appearing I believe the same to be true."
24. In his supplemental affidavit of 2 December 2019, Mr Nevin states as follows.
- "4. As previously averred to in the Grounding Affidavit I am employed by Start Mortgages Holding Limited ('SMHL') which is the parent company and sole shareholder of Start Mortgages Designated Activity Company the Applicant herein. SMHL manages and services all loans held by the Applicant. All employees of SMHL have been authorised by the Applicant to access its books and records. In those circumstances, I am giving evidence on behalf of the Applicant from facts which are within my own direct knowledge of the books and records of the Applicant. This is first-hand evidence contrary to what is contended by the First Named Defendant.
5. Accordingly, I say and believe that I am an appropriate and correct person in which to swear Affidavit on behalf of the Applicant."
25. Mr Nevin has exhibited, as part of his first affidavit, a deed entitled "Irish Law Global Deed of Transfer, Conveyance and Assignment (Excluding Property)". This deed is dated 1 February 2019, and has been entered into by Permanent TSB plc, as the seller, and Start Mortgages DAC, as the buyer.
26. Mr Nevin avers that the loan facility and indenture of mortgage and charge the subject matter of the proceedings have been transferred to Start Mortgages under this deed of transfer.
- "13. On the 1st February 2019, the Bank executed a Deed of Transfer (the 'Transfer Deed') whereby the Bank transferred all its right, title, interest, estate, benefit and entitlement (past and present) in and under the Underlying Loans and each of the Finance Documents (as each of the capitalised terms is defined in the Transfer

Deed) which includes the Facility and the Indenture of Mortgage and Charge in the within proceedings to the Applicant (the 'Transfer'). I beg to refer to a copy of the Transfer Deed and the relevant extracts from Schedule 1 to the Transfer Deed confirming the inclusion of the Defendants' mortgage loan account, the Facility and the Indenture of Mortgage and Charge upon which, and marked with the letters and number 'JN2', I have signed my name prior to the swearing hereof.

14. At Schedule 1 to the Deed of Transfer as exhibited at 'JN2' above, there are a number of headings and entries which remain unredacted. The account number column in Schedule 1 identifies the loans which are the subject of the Transfer. As part of Schedule 1, the Defendants account number – 90028733 – appears in the 'Account Number' column's at page 11 and 1337 thereof."
27. The affidavit goes on to explain that information relating to borrowers who are not parties to the proceedings has been removed or redacted entirely for reasons related to commercial sensitivity, restrictions imposed by the Data Protection Acts 1988 to 2018 and banker/client confidentiality.
28. The affidavit also exhibits a deed entitled "Irish Law Deed of Conveyance & Assignment (Unregistered Property)". Extracts from the schedule are then exhibited which purport to show that the ownership of the two parcels of unregistered land has been transferred to Start Mortgages.
29. Insofar as the third parcel of land is concerned, i.e. the parcel of land in respect of which title is registered, a copy of the relevant folio has been exhibited. The folio indicates that Start Mortgages has been registered as the owner of the charge. (Folio 16003F, County Leitrim).
30. The affidavit also establishes that notice of the assignment, for the purposes of section 28 of the Supreme Court of Judicature Act (Ireland) 1877, has been given to Mr & Mrs Burns. The relevant letters have been exhibited at "JN7" and "JN8" of Mr Nevin's first affidavit.
31. As noted above, Mr Nevin has sworn a supplemental affidavit dated 2 December 2019. As part of this affidavit, he refers to Clause 6.7 of PTSB's 2002 mortgage conditions (which had been exhibited in the verifying affidavit of Jacqueline O'Brien sworn herein on 8 July 2015). This clause provides that Permanent TSB may at any time (without the consent of the mortgagor) transfer the benefit of the mortgage to any person.

MR BURNS' TWO AFFIDAVITS

32. Mr Burns has sworn an affidavit dated 11 November 2019. The principal point made in the affidavit is that Mr Justin Nevin is not directly employed by Start Mortgages DAC. The affidavit makes a submission to the effect that the evidence in Mr Nevin's affidavit is hearsay in nature. It is further submitted that Start Mortgages cannot rely on the Bankers' Books Evidence Act 1879. The judgment of the Supreme Court in *Criminal Assets Bureau v. Hunt* [2003] 2 I.R. 168 is then cited.

33. At paragraphs 9 and 10 of his affidavit, Mr Burns criticises what is said to have been a failure on the part of the company secretaries of Start Mortgages and PTSB to exhibit what is described as “the alleged mortgage”.
34. Mr Burns has filed a supplemental affidavit dated 16 December 2019. This affidavit largely repeats the objection that the evidence put forward by Start Mortgages is hearsay and that Mr Nevin does not have first-hand knowledge.

DISCUSSION AND DECISION ON ORDER 17 APPLICATION

35. For ease of exposition, I propose to address the position in respect of the registered land first, before moving on to consider the two parcels of unregistered land.

(i). Registered land

36. The change of ownership of the charge has been formally recorded on the Register of Title. More specifically, the change of ownership is recorded under Folio 16003F, County Leitrim, which has been exhibited by Mr Nevin, as follows.

“(2) 07 – May – 2010

Charge for present and future advances repayable with interest. IRISH LIFE & PERMANENT plc is owner of this charge.

Note: The ownership of this charge has been transferred. See Entry No. 4.

[...]

(4) 27 – Mar – 2019

START MORTGAGES DESIGNATED ACTIVITY COMPANY is owner of the charge registered at Entry No. 2.”

37. The Court of Appeal in *Tanager DAC v. Kane* [2018] IECA 352 held that the correctness of the Register of Title cannot be challenged in possession proceedings. See paragraphs [67] and [68] as follows.

“A plaintiff seeking an order for possession must adduce proof, *inter alia*, that he or she is the registered owner of the charge. It is registration that triggers the entitlement to seek possession. In those proceedings, the court may not be asked to go behind the Register and consider whether the registration is, in some manner, defective. In the possession proceedings, the court must accept the correctness of the particulars of registration as they appear on the folio, because the statutory basis for the action for possession is registration. This is one consequence of the statutory conclusiveness of the Register, and of the statutory limits to rectification.

The challenge to registration is brought by other types of proceedings *inter partes*, or where the PRA is respondent, and in the manner I have described.”

38. Leave to appeal to the Supreme Court was refused by Determination dated 12 April 2019, *Tanager DAC v. Kane* [2019] IESCDT 80.
 39. The uncontroverted evidence before the court establishes, therefore, that Start Mortgages has succeeded to PTSB's interest in the registered charge. Start Mortgages have established to the requisite standard that they have succeeded to PTSB's interest as mortgagee in the land and, accordingly, there has been a "change or transmission of interest" such as to justify the making of an order pursuant to Order 17, rule 4. As the owner of the registered charge, Start Mortgages is entitled to the benefit of the order for possession. They are a proper party to be joined to the proceedings.
- (ii). *Unregistered land*
40. Turning now to the two parcels of unregistered land, there is, of course, no equivalent statutory register which objectively establishes the transfer of the ownership of the mortgagee's interest in those lands from PTSB to Start Mortgages. Rather, Start Mortgages has sought to establish the transfer of ownership (and of the benefit of the proceedings) by way of affidavit evidence and the documentation exhibited thereto.
 41. The principal objection made by Mr & Mrs Burns is that the affidavits and exhibits represent inadmissible hearsay evidence. It is suggested that, save in the limited circumstances provided for under the Bankers' Books Evidence Act 1879, a financial institution is not entitled to rely on hearsay evidence. The 1879 Act was said not to apply in circumstances where the deponent, Mr Nevin, was not an "officer" of Start Mortgages DAC.
 42. It may be useful to pause here to recall what precisely it is that Start Mortgages is required to establish, namely that there has been a change or transmission of interest to Start Mortgages. To this end, a copy of the relevant deed of transfer and the deed of conveyance have been exhibited. These documents have been put before the court by a deponent who expressly avers that he is authorised by Start Mortgages to access its books and records.
 43. The commercial transaction at issue is very different from the type of transaction which typically arises in the context of debt collection proceedings. In most such cases, the dispute is concerned primarily with transactions as between the creditor and debtor, i.e. between the bank and an individual customer. The dispute will normally relate to details of the repayments made in respect of a loan, and the calculation of arrears and interest. It is in such a context that a financial institution may wish to consider invoking the Bankers' Books Evidence Act 1879. This affords a financial institution a method of proving entries in a banker's book (as defined and updated by the Central Bank Act 1989). Section 4 provides as follows.
 4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the

usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

44. As appears, the legislation is directed to entries made “in the usual and ordinary course of business”. It may be doubtful as to whether the legislation extends to the sale of a loan book. At all events, as elaborated upon below, Start Mortgages have not sought to rely on the Banker’s Book Evidence Act 1879 in this case.
45. The objection made by reference to the Bankers’ Books Evidence Act 1879 appears to misunderstand the approach taken by Start Mortgages. Start Mortgages have not sought to rely on the 1879 Act. Rather, Start Mortgages have put before the court copies of the relevant contractual documentation by which the transfer of the mortgage and underlying loan facilities is said to have been effected. This documentation has been exhibited by a deponent who expressly states he has made his affidavit on behalf of Start Mortgages DAC and with its authority, and from a diligent perusal of its books and records. The contractual documentation exhibited is documentation to which Start Mortgages DAC is a party.
46. Mr & Mrs Burns have not sought to query the authenticity of the contractual documentation, nor to suggest that the commercial transactions described in Mr Nevin’s affidavit did not occur. They have not sought to cross-examine Mr Nevin.
47. The circumstances of the case are somewhat similar to those considered by the Supreme Court in *Ulster Bank Ireland Ltd v. O’Brien* [2015] IESC 96; [2015] 2 I.R. 656. That judgment concerned an application for a summary judgment pursuant to Order 37 of the Rules of the Superior Courts. The bank had sought to prove the debt by filing an affidavit from a bank employee and exhibiting the relevant loan documentation. The Supreme Court held that the swearing of an affidavit and its service in court proceedings which make allegations that a sum is due, can be accepted, in the absence of denial, where the form and the content of what is deposed to and the exhibits supporting it carry sufficient indications of reliability.
48. The uncontroverted evidence before the court in the present case establishes that Start Mortgages has succeeded to PTSB’s interest in those lands. Mr Nevin has exhibited the global deed of transfer and the subsequent deed of conveyance. In each instance, there is an express reference to the underlying loan facilities and the mortgage. Mr & Mrs Burns have not sought to challenge the validity of these 2019 deeds, nor to suggest that they do not apply to the relevant lands. Rather, the concern expressed in Mr Burns’ two affidavits appears to be addressed principally to an *earlier* point in time, namely the entering into of the Mortgage on 23 September 2007. With respect, any challenge to the validity of the underlying mortgage was a matter which fell to be determined in the context of the application for orders for possession. This application was determined by

the High Court in January 2017, and the subsequent appeal against those orders was dismissed by the Court of Appeal on 28 November 2018. It is not open to Mr & Mrs Burns to seek to re-agitate these issues in the context of a narrow procedural application to, in effect, substitute Start Mortgages as plaintiff in the proceedings.

49. Start Mortgages have put sufficient material before the court by way of affidavit evidence and exhibits to establish a “change or transmission of interest” from PSTB to Start Mortgages in 2019. None of this evidence has been challenged by Mr & Mrs Burns. Nor have Mr & Mrs Burns sought to cross-examine the deponent on behalf of Start Mortgages.
50. Finally, it is clear from the copy of the Mortgage which has been exhibited in the affidavit of Jacqueline O’Brien sworn herein on 8 July 2015 that Permanent TSB may at any time (without the consent of the mortgagor) transfer the benefit of the mortgage to any person. This does not represent an “unfair term” for the purposes of the Unfair Contract Terms Directive (93/13/EEC) or the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (as amended), for the reasons set out in *AIB Mortgage Bank v. Cosgrove* [2017] IEHC 803 and the case law cited, in particular, at paragraph [54] thereof.

APPLICATION FOR LEAVE TO EXECUTE

51. A party who has the benefit of an order is generally required to execute same within a period of six years. If this is not done, then it is necessary to make an application for leave to issue execution pursuant to Order 42, rule 24. That rule provides as follows.

24. In the following cases, viz.:

- (a) where six years have elapsed since the judgment or order, *or any change has taken place by death or otherwise in the parties entitled or liable to execution*;*
- (b) where a party is entitled to execution upon a judgment of assets in futuro;
- (c) where a party is entitled to execution against any of the shareholders of a company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court for leave to issue execution accordingly.

The Court may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried: and in either case the Court may impose such terms as to costs or otherwise as shall be just. Provided always that in case of default of payment of any sum of money at the time appointed for payment thereof by any judgment or order made in a matrimonial cause or matter, an order of fieri facias may be issued as of course upon an affidavit of service of the judgment or order and non-payment.

*Emphasis (italics) added.

52. The grant of leave to issue execution under Order 42, rule 24 is discretionary. The criteria governing the exercise of this discretion have been set out in *Smyth v. Tunney* [2004] IESC 24; [2004] 1 I.R. 512. The Supreme Court held that it is not necessary to give some unusual, exceptional or very special reasons for obtaining permission to execute out of time provided that there is some explanation at least for the lapse of time. Even if a good reason is given, the court must consider counterbalancing allegations of prejudice.
53. On the facts of the present case, the necessity for an application under Order 42, rule 24 arises as a result of a change in the parties entitled to execute. For the reasons set out in detail under the previous heading, I am satisfied that Start Mortgages has succeeded to PTSB's interest as mortgagee and/or charge holder in respect of the three parcels of lands. The proceedings have also been assigned to it. As a consequence, it is entitled to the benefit of the orders for possession made in January 2017. The grant of an order of leave to execute is necessary so as to allow Start Mortgages to enforce the orders for possession. This formal order is necessary to reflect the underlying reality that they are now the moving party.

CONCLUSION AND FORM OF ORDER

54. Start Mortgages has succeeded to PTSB's interest as mortgagee and/or charge holder in respect of the three parcels of lands. The proceedings have also been assigned to it. As a consequence, it is entitled to the benefit of the order for possession made in January 2017. Start Mortgages is, accordingly, entitled to the procedural orders sought in its notice of motion of 29 July 2019.
55. An order is made pursuant to Order 17, rule 4 making Start Mortgages DAC a party to the proceedings and providing that the proceedings shall be carried on between the Defendants, as continuing parties, and Start Mortgages DAC, as a new party in substitution for Permanent TSB plc.
56. An order is made amending the title of the Plaintiff in the within proceedings to Start Mortgages DAC in lieu of Permanent TSB plc, the title hereof to be duly entered in the Central Office of the High Court with the proper officer.
57. An order pursuant to Order 42, rule 24 granting Start Mortgages DAC liberty to issue execution in respect of the orders for possession made by the High Court on 16 January 2017.
58. I will hear the parties on the question of costs.