

THE HIGH COURT
COMMERCIAL

[2022] IEHC 344
2017 No. 11335P
(2018 No. 17 COM)

BETWEEN:

THOMAS KEARNEY

PLAINTIFF

AND

BANK OF SCOTLAND PLC AND PATRICK HORKAN

DEFENDANTS

DECISION of Mr Justice Brian O'Moore delivered on the 30th day of May, 2021

1. By its judgment of the 5th of August 2020, the Court of Appeal remitted to this court the one outstanding issue in these proceedings. That issue is;

'...whether the appointment of Patrick Horkan as "Receiver" by deed of appointment dated 5 July 2012 was valid pursuant to clause 8.1 of the Charge (as defined...) conferring on the mortgagee the power to appoint a "receiver and manager" over the Secured Property (as defined...)" - Appendix I to the judgment.

2. The judgment of the 5th of August 2020 constituted the decision of the Court of Appeal on the review sought by Mr. Kearney of that court's main judgment on his appeal. The main judgment was delivered on the 8th of April 2020, and bears the

neutral citation [2020] IECA 92. The later judgment has the neutral citation [2020] IECA 224.

3. This one issue came before me for hearing on the 9th and 10th of December 2021. At the start of the hearing, counsel for Mr. Kearney sought to vary the Issac Wunder order which had been placed on Mr. Kearney by McGovern J. and which was upheld (with some variation) by the Court of Appeal. I heard extensive submissions on the issue which Mr. Kearney wished to ventilate. I refused to vary the Isaac Wunder order, not least because the argument which Mr. Kearney sought to advance was one which would not in any event have succeeded.

4. On the issue remitted by the Court of Appeal, I have decided that Mr. Horkan has been validly appointed. The applicable principles have been fully set out by Murray J. in Fennell v Corrigan [2021] IECA 248. Applying the analysis described by Murray J, I find that the appointment of Mr. Horkan was an effective and lawful one.

5. When the hearing concluded I had hoped, after receipt of the transcript, to be able to deliver judgment in January 2022. That proved impossible, due to the preparation for a lengthy trial which began on the 25th of January 2022. That hearing having concluded on the 24th of May 2022, I am now in a position to give my decision. The full judgment should be circulated before the end of next Term.