

THE HIGH COURT

[2023] IEHC 380

[2019 2798 P]

BETWEEN

LIAM CURRAN AND KEIRA CURRAN

AND

PERMANENT TSB PLC

PLAINTIFFS

AND

HAMILTON HOLDINGS LLC

DEFENDANT

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 30th day of June 2023

1. This is an application for judgment in default of appearance in proceedings concerning the true ownership of property at 13 St. Mary's Road, Ballsbridge, Dublin 4.
2. The facts giving rise to these proceedings are truly extraordinary. The first and second named plaintiffs, the Currans, are a married couple who live in Ranelagh. They also own the house in Ballsbridge. That property was mortgaged in favour of the third plaintiff, PTSB. The relevant mortgages were entered into in 2007 and 2008. As a result of arrangements entered into between the Currans on the one part and PTSB on the other part, as of March 2015 it was agreed that PTSB was the effective legal owner of title to the property at St. Mary's Road.

The Ballsbridge property, when acquired by the Currans and when charged in favour of PTSB, was unregistered land.

3. It was therefore a matter of some surprise to the Currans and to PTSB that, on foot of an application made on the 3rd of April 2018 on behalf of Hamilton, the Property Registration Authority registered Hamilton as the first registered owner of the Ballsbridge property.

Hamilton had, purportedly, acquired the property by deed of conveyance dated the 18th of January 2018 from a company known as Kent International Holdings LLC (“Kent”). Kent, in turn, had purportedly acquired the property from the Currans by way of a deed of conveyance of the 8th of July 2014.

4. The evidence before me is that the Currans never sold the property, either to Kent, or to anybody else. The alleged deed of conveyance of the property from the Currans to Kent has never surfaced. The details of it are known from the recitals to be found in the conveyance from Kent to Hamilton. For the sake of completeness, it should be noted that Kent is a company with an address as Hunkins Waterfront Plaza, Suite 556, Main Street, Charlestown, Nevis, West Indies. Hamilton is a United States company of 1621 Central Avenue, Cheyenne, Wyoming. Hamilton also has an address in Ireland, at which all papers in these proceedings have been served.

5. Given that Liam Curran has provided plain and uncontradicted evidence that neither he nor Keira Curran executed any conveyance of title to the property in favour of Kent, nor did the Currans part with title to the property since acquiring it (other than the arrangements entered into with PTSB), I have no option but to find that the asserted conveyance of the Ballsbridge property to Kent was a fraudulent transaction. Equally, the transfer of Kent’s

interest in the property to Hamilton is, to put it at its lowest, based on the false premise that there was a valid and effective conveyance from the Currans to Kent.

6. As Hamilton has taken no part in these proceedings, it has not been possible to probe any of the persons behind Hamilton (or the solicitor acting for that company in seeking first registration with the Property Registration Authority of the Ballsbridge lands) about their state of knowledge or mindset in acting as they did. However, at the very least the application to register Hamilton as the owner of the Ballsbridge property was based on a fundamental error to the effect that Hamilton had acquired an interest in the property as a result of the conveyance of Kent's ownership to it. Kent never owned the property.

7. Apart altogether from this basic mistake in the account presented to the PRA as the transmission of an interest on the part of Kent to Hamilton, there is the fact that the mortgages in favour of PTSB were not disclosed by Hamilton's solicitor in seeking registration of the property with the PRA. As was submitted to me by counsel for PTSB, any proper searches by Hamilton's solicitors would have revealed the mortgages granted in respect of the properties by the Currans to PTSB. Either these basic searches were not carried out, in which case Hamilton's solicitor was fundamentally mistaken in certifying to the PRA that the Ballsbridge property "was free from any adverse rights, restrictive covenants or encumbrances. . ." or alternately the PTSB mortgages were known to the solicitor (in which case the PRA were fundamentally misled by that individual).

8. Put simply, therefore, the evidence relevant to the current application is as follows: -
(i) The Currans purchased the Ballsbridge property as unregistered land by contract dated the 13th of November 2006. The property was conveyed to the Currans in June 2007.

- (ii) The Currans entered into mortgages with PTSB in June 2007 and May 2008.
- (iii) These mortgages were registered in the Registry of Deeds in September 2007 and February 2009 respectively.
- (iv) The existence of these mortgages would have been plain to anybody carrying out a Registry of Deeds search any time after their registration.
- (v) The purported conveyance of the Ballsbridge property from the Currans to Kent never happened. Any deed purporting to have effected such a transfer is a fraud.
- (vi) The transfer of the Ballsbridge property to Hamilton is premised upon the validity of the acquisition of the property by Kent. The transfer from Kent to Hamilton, given the fraudulent nature of Kent's acquisition or purported acquisition of an interest in the property, is itself either fraudulent or mistaken (in that is based upon the validity of Kent's acquisition of an interest in the property).
- (vii) In applying for registration of Hamilton "as owner with absolute title" of the property with the Property Registration Authority, the solicitor for Hamilton stated that 13 St. Mary's Road was free from any encumbrances. This was wrong, and any proper search against the property would have revealed that this was untrue. The representation to the PRA was, at the very least, fundamentally mistaken.

9. Based on this summary of the evidence, I am asked to decide the reliefs to which the plaintiffs are entitled, given that no appearance has been entered by Hamilton to these proceedings.

10. In the first place, I am satisfied that the plaintiffs are entitled to judgment against Hamilton. I am also entitled that, for reliefs sought on the general indorsement of claim, the plaintiffs are entitled to the following orders: -

- (i) A declaration that Hamilton has no right, title, interest or estate in or to the Ballsbridge premises.
- (ii) A declaration that the purported indenture of conveyance of title to the Ballsbridge premises dated the 18th of January 2018 alleged to have been made between Kent as vendor and Hamilton as purchaser is a fraud and/or a nullity and is void and of no legal effect.
- (iii) A declaration that the registration of Hamilton as full owner of the premises as of the 31st of May 2018 as purportedly contained in Folio 224289 F was procured by fraud or mistake and is of no effect.
- (iv) An order pursuant to s. 31 and/or s. 32 of the Registration of Title Act 1964 as amended directing the register of ownership of freehold land to be rectified so as to show that the title of the Currans to the property, which was subject to the two mortgages held by PTSB as mortgagee duly stamped and registered in the Property Registration Authority against the premises dated the 1st of June 2007 and the 15th of May 2008 and subject to an order of possession made on the 24th of June 2014 in favour of PTSB.

11. The entitlement of the plaintiffs to these orders follows from the provisions of s. 31 of the Registration of Title Act 1964, which confirms the jurisdiction of this Court to make appropriate orders directing that the register be rectified “in such manner and on such terms as it thinks just” in the event of “actual fraud or mistake” in the registration process.

12. I therefore intend to make an order as described in the preceding paragraphs. I will list the matter for mention only on the 11th of July at 10:30 a.m. for the purpose of hearing submissions on the precise form of the order and determining any outstanding matters, including the costs of these proceedings.