



THE HIGH COURT

[2025] IEHC 31

[Record No. 2023 241 HCA]

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY COMPANY

PLAINTIFF

AND

DECLAN EGAN

DEFENDANT

JUDGMENT of Ms. Justice Marguerite Bolger delivered on the 22nd day of January 2025

1. This is an appeal from the order of the Circuit Court dated 4 December 2023 granting possession of the premises at "Auburn" Old Dublin Road, Stillorgan, in the County of Dublin (hereinafter referred to as 'the property') to the plaintiff. For the reasons set out below, I reject the appeal and affirm the order of the Circuit Court.

Background

2. The property is unregistered land, is the principal private residence of the defendant and its market value does not exceed €3 million, thereby allowing the Circuit Court jurisdiction to determine the plaintiff's application for possession.

3. In January 2005, the defendant and his late wife provided a mortgage in favour of Bank of Scotland (Ireland) Ltd in consideration of a loan of €1,244,000 for 15 years. The mortgage later fell into arrears.

4. On 31 December 2010, a cross-border merger took place between Bank of Scotland (Ireland) and Bank of Scotland Plc, whereby Bank of Scotland Plc acquired the interest of Bank of Scotland (Ireland) in the loan and the security. On 17 May 2018, the plaintiff entered a mortgage sale deed with Bank of Scotland Plc, and, on 28 September 2018, the plaintiff

entered a deed of conveyance and assignment which assigned to the plaintiff all of the bank's:

"...right, title, estate, interest, benefit and obligation (both present and future) in the Properties and the Mortgages (which do not relate to registered land) arising in and under the Mortgages (subject to the mortgagor's equity of redemption arising in respect of the Mortgages) including for the avoidance of doubt:

(a) the right to demand, sue for, recover, receive and give receipts for all principal moneys payable or to become payable under the relevant Mortgages or the unpaid part thereof..."

The mortgages were set out in the schedule to that deed and include the address of the property with the loan identified by an account number that corresponds to the defendant's Bank of Scotland's loan account number, as identified in the offer of mortgage loan made to the defendant and his late wife by letter dated 18 October 2004.

5. Whilst the deed was registered in the Registry of Deeds on 23 October 2018, the plaintiff does not rely on that entry, but rather relies on the terms of the deed whereby it says Bank of Scotland transferred the defendant's loan mortgage agreement to it. The plaintiff maintains that notice of the absolute assignment of the legal interest in the debt, as required by s. 28(6) of the Supreme Court of Judicature Act (Ireland) 1877 (hereinafter referred to as 'the 1877 Act') was effected by the sending of the goodbye letter by Bank of Scotland on 1 October 2018 and the hello letter sent by the plaintiff on 4 October 2018, both of which were received by the defendant. Both letters referred to the bank having transferred the defendant's mortgage to the plaintiff and stated that the plaintiff held the legal title to the mortgage on trust for Erimon Home Loans Ltd, a subsidiary of Barclays Bank Plc, or its nominee. That was the only reference to Erimon in the documentation before this Court other than in the affidavits and submissions. All correspondence came from the plaintiff, and it was the plaintiff that brought the within proceedings claiming an order for possession of the property.

The defendant's case

6. The defendant's main case is that the plaintiff cannot seek an order for possession as it is the legal and not the beneficial owner of the mortgage. He laid heavy emphasis on s. 28(6) of the 1877 Act and referred to what he called the common law on assignment as requiring summary proceedings for possession to be initiated by Erimon, as the beneficial

owner of the mortgage. In subsequent oral submissions, he claimed that the plaintiff lacked *locus standi* as it was not a retail credit firm, albeit that allegation was not addressed on affidavit. A Central Bank of Ireland document was furnished by the plaintiff which confirmed that the plaintiff was authorised by the Central Bank as a retail credit firm on 27 October 2016. The defendant was permitted to file further written submissions on this point, which he did on 18 December 2024 in which he conceded the plaintiff's regulated status as a retail credit firm but went on to reiterate the arguments he had made previously in relation to what he described as the plaintiff's "*bare legal charge*".

7. The defendant argued that these proceedings should be referred for plenary hearing and joined with other plenary proceedings he issued shortly after the institution of the within possession proceedings.

Plenary hearing

8. There is no basis for referring this matter to a plenary hearing. The issues raised by the defendant are principally issues of law, on which extensive written and oral submissions were made, and are suitable for resolution within summary proceedings such as these, subject to the plaintiff's proofs being in order (as I find they are, for the reasons set out below). The defendant suggested that summary proceedings meant he could not ventilate matters as he would like to. This claim has no basis in fact as can be seen from the extensive written and oral submissions he has made and the manner in which the defendant has been facilitated, including in being granted an adjournment in the course of the hearing to allow him to file another affidavit and a further opportunity thereafter to file supplemental written submissions on an issue that he had raised for the first time in his oral submissions to the court.

Legal vs beneficial owner of the mortgage and possession proceedings

9. The mortgage sale deed of May 2018 and the deed of conveyance and assignment of September 2018 transferred the defendant's mortgage and underlying debt from Bank of Scotland to the plaintiff. The assignment was not by way of charge only, a point which seems to have created some misunderstanding for the defendant who sought to rely on the distinction made between an "*absolute assignment*" and a "*charge*" under the 1877 Act. During his oral submissions the defendant repeatedly described the plaintiff as the "*bare assignee of the legal charge*" and in his supplemental written submissions he said the plaintiff had taken "*an assignment of a bare legal charge from Bank of Scotland Plc.*". However, the

deed on which the plaintiff relies was an absolute assignment of the mortgage and the underlying debt and not merely the creation of a charge against those items.

10. The plaintiff is not, as claimed by the defendant, a third party without a horse in the race. It is the legal owner of the mortgage loan agreement and that gives it rights, including the right to seek possession where the mortgage has fallen into arrears and the other proofs have been complied with. The plaintiff seeks possession on its own behalf as the legal owner of the mortgage. It is not purporting to act on behalf of another. There is no breach of the law on champerty or maintenance.

11. The Supreme Court recognised in *SPV Osus v. HSBC Institutional Trust Services (IRE) Ltd* [2019] 1 IR 1 that the assignment of a debt is lawful. O'Donnell J. (as he was then) stated, at paragraph 102, "... debts, although enforceable by action, have always been regarded as assignable even if in some cases when contested they can give rise to contentious litigation." Thus s. 28(6) has been complied with and there is no breach of the law on assignment as asserted by the defendant.

12. The essence of the defendant's argument appears to be that a mortgage may only be enforced by a party which has beneficial ownership of the mortgagee's interest. Arguments along those lines have been rejected in a number of judgments. The caselaw discussed below establishes that an entity who has legal title to the mortgagee's interest is entitled to enforce as a mortgagee and can seek an order for possession once they satisfy the necessary proofs.

13. In *Kearney v. KBC Bank* [2014] IEHC 260, the plaintiff's loan facilities and/or mortgages had been sold or securitised. The plaintiff contended that the defendant bank, therefore, had no right to enforce the loan. This was flatly rejected by Birmingham J. in his decision to strike out the proceedings as frivolous and vexatious. He stated:

"24. In relation to the emphasis that the plaintiff places on the issue of securitisation; observations made by Peart J. in Wellstead v. Judge White and Others [2011] IEHC 438, are very much on point. There, Peart J. observed:-

'But there is another obstacle which faces the applicant, and which he has not addressed, and it is that there is nothing unusual or mysterious about a securitisation scheme. It happens all the time so that a bank can give itself added liquidity. It is typical of such securitisation schemes that the original lender will retain under the scheme, by agreement with the transferee, the

obligation to enforce the security and account to the transferee in due course upon recovery from the mortgagors.'

25. *The views expressed by Peart J. with which I find myself in complete and respectful agreement, also, accords with the approach of the English Court of Appeal in the case of Paragon Finance plc v. Pender [2005] 1 W.L.R. 3412. The Court of Appeal was of the view that all that the special purpose vehicle acquired, under an uncompleted agreement to transfer the legal charge, was an equity in the mortgage. Paragon remained the legal owner, and as registered proprietor of the charge, retained all the powers of a legal chargee, including the right to possession, nor was it necessary to join the special purpose vehicle. The arrangement here was similarly structured to the arrangements with which the English Court of Appeal was concerned and I reach similar conclusions.*

26. *In summary then as far as this issue is concerned, and it is worth repeating that it is relevant to only two of the loans, the defendant bank retains legal title to the loan facilities and mortgages and the interest that was transferred by the bank to the special purpose vehicles was an equitable interest only and accordingly the bank is clearly entitled to enforce the loan facilities and the security for same."*

14. A similar legal title to the mortgage was held by the plaintiff in *Pepper Finance v. Jenkins* [2018] IEHC 485. The defendant argued that the beneficial owner of the defendant's loan or related security had to be involved in the proceedings so that the defendant could know with certainty the identity of the parties entitled to receive repayment of the loan. Binchy J. identified the sole issue in the proceedings as follows:

"30. It seems to me that it is wholly unrealistic to argue that an assignee such as Windmill could, in circumstances where no notice of the assignment has been given to the debtor, successfully bring forward any claim against a debtor such as the defendants in this case. Windmill has very deliberately structured its arrangements with the plaintiff so as to enable the plaintiff to receive repayments from the defendants, and to take such enforcement proceedings arising from non-repayment of the debt as the plaintiff considers appropriate. More importantly, both the plaintiff and Windmill have chosen not to give notice of the assignment or securitisation of the debt to the defendants. This is knowledge that they have gleaned from other sources. Although the decisions of the courts in this jurisdiction as regards the effects

of securitisation of debt, to which I have referred above, do not enter upon a consideration as to the rights and entitlements of an assignor and an assignee of a chose in action, they give effect to the manner in which the securitisation was intended to operate by the parties thereto which, it must be said, is in no way prejudicial to the rights of the borrowers. Furthermore, unless borrowers are specifically put on notice of such an assignment I consider that the risk that a borrower could be subjected to more than one suit in respect of the same debt is more illusory than real and I do not believe that the courts would countenance such a proposition.

31. For all of these reasons, I consider that the plaintiff was not obliged either to join Windmill to the proceedings or to declare its status as trustee of Windmill in the proceedings. The plaintiff is therefore entitled to succeed and the appeal should be allowed."

15. More recently, a similar argument was trenchantly rejected by Simons J. in *Start v. Kavanagh* [2023] IEHC 452, where he stated:

*"16. It is implicit in Mr. Kavanagh's submissions that only the holder of an equitable or possessory title to a consumer credit agreement is allowed to issue enforcement action in its own name. Start Mortgages are criticised for supposedly acting on behalf of a hidden and concealed principal. With respect, both the case law and the legislation make it clear that the holder of the legal title to a credit agreement is entitled to enforce same. The argument to the contrary was rejected by the High Court (Hedigan J.) in its ex tempore judgment on 18 July 2016. In this regard, the trial judge had cited with approval the judgment in *Kearney v. KBC Bank Ireland plc* [2014] IEHC 260."*

16. The defendant sought to rely on authorities, all of which relate to different shortcomings in the proofs that were relied on by the financial institution seeking possession of a mortgaged property, none of which exists here. As set out above, the deed of transfer on which this plaintiff relies clearly identifies both the property and the loan account number of the mortgage which matches the account number on the defendant's original mortgage loan offer letter from Bank of Scotland. There was no such clarity in the cases on which the defendant sought to rely. For example, in *Mars Capital Finance Ireland DAC v. Temple* [2023] IEHC 94, Simons J. found that the deed of transfer on which the plaintiff relied did not

establish that ownership of the debt had passed to it and, in fact, found that, what he described as “[t]he limited material before the court” did not establish even on a *prima facie* basis that the defendant’s debt had been transferred to the plaintiff. The loan simply referred to a figure in euros and did not refer to any account numbers. In those circumstances, Simons J. remitted the matter to plenary hearing. Here, the situation is quite different in that the deed of charge does identify the debt by the correct account number. *Start Mortgages DAC v. Ramseyer* [2024] IEHC 329 was also remitted to plenary hearing where the court found it was not possible to determine from heavily redacted documents whether the plaintiff had, in fact, taken a valid transfer of the debt in respect of the loan that was originally advanced to the defendant by Bank of Scotland. For the reasons set out above, no such difficulties arise for this Court and the necessary proofs have been established by the plaintiff.

Ownership of the property

17. [text redacted]
18. [text redacted]
19. [text redacted]
20. [text redacted]
21. [text redacted]

Conclusion

22. The defendant did not dispute the fact of the arrears on the mortgage as had been set out on affidavit, and his case was principally based on what he said was the plaintiff’s lack of *locus standi* to enforce the mortgage where a different entity is the beneficial owner thereof. For the reasons set out above, I have found that argument to have no basis in law. The plaintiff has satisfied the proofs necessary for an order for possession.

23. I therefore affirm the order of the Circuit Court.

Indicative view on costs

24. As the plaintiff has succeeded in defending the appeal from the decision of the Circuit Court, my indicative view on costs, in accordance with s. 169 of the Legal Services Regulation Act 2015, is that the plaintiff is entitled to their costs to be adjudicated upon in default of agreement. I will put the matter in before me a 10am on 4 February 2025 for the making of final orders including costs.

The defendant represented himself.

Counsel for the plaintiff: Tomás Keys BL