APPROVED **[2025] IEHC 9**

THE HIGH COURT
CIRCUIT APPEAL

2024 129 CA

BETWEEN

PROMONTORIA (OYSTER) DAC

PLAINTIFF

AND

GARY MC COOL

DEFENDANT

EVERYDAY FINANCE DAC

MOVING PARTY

JUDGMENT of Mr. Justice Garrett Simons delivered on 14 January 2025

INTRODUCTION

1. This judgment is delivered in respect of an appeal from the Circuit Court. The order under appeal is an order substituting Everyday Finance as plaintiff in lieu of Promontoria (Oyster) ("*the substitution order*"). The substitution order was made pursuant to Order 22, rule 4 of the Circuit Court Rules.

2. The defendant has appealed against the substitution order. The two principal

grounds upon which it is sought to set aside the substitution order are as follows. First, it is said that the Circuit Court had, in fact, previously refused to make a substitution order. On this analysis, it is said that the Circuit Court erred in law in purporting *to revisit* this supposed refusal. Secondly, it is said that there has been a failure to serve valid "*hello*" and "*goodbye*" letters. This is said to represent non-compliance with the requirements of section 28(6) of the Supreme Court of Judicature Act (Ireland) 1877.

PROCEDURAL HISTORY

3. The narrative which follows recites the procedural history before the Circuit Court in some detail. This is unusual: generally, it is not necessary in the context of a rehearing before the High Court to examine events before the Circuit Court as the court of first instance. In the present case, however, it is necessary to consider the procedural history in circumstances where there is a fundamental dispute between the parties as to the nature of the order actually made by the Circuit Court. The disagreement centres on whether the Circuit Court had previously made an order refusing the substitution application and then purported to "*revisit*" and set aside that order at a later date.

4. The underlying proceedings take the form of an application for an order for possession. The order for possession is sought pursuant to the provisions of section 62(7) of the Registration of Title Act 1964. As provided for under the Land and Conveyancing Law Reform Act 2013, the proceedings were instituted before the Circuit Court. The proceedings have yet to come on for full hearing.

5. An application has been made to substitute Everyday Finance as plaintiff in lieu of the original plaintiff, Promontoria (Oyster). The substitution application is

advanced in circumstances where it is alleged that the interest in both the registered charge and the underlying debt have been transferred to Everyday Finance. The application has been brought by way of notice of motion. This is unusual: the Circuit Court Rules allow for the application to be made on an *ex parte* basis. The rights of the other parties are normally protected by including a proviso, in any substitution order made, along the lines indicated in *Permanent TSB v. Doheny* [2019] IEHC 414.

6. The substitution application has been before the Circuit Court on a number of occasions. The matter initially came before His Honour Judge Aylmer in February 2023. At that point, an objection had been raised on behalf of the defendant that documentation was being served at an address in Derry at which he did not reside. It appears that the Circuit Court directed that all further correspondence and proceedings should be sent to a different address at Redcastle, Donegal.

7. The substitution application came on for hearing before the Circuit Court (His Honour Judge McAleese) on 15 November 2023. It is apparent from the transcript of that hearing that the Circuit Court was not satisfied that there had been proper compliance with the provisions of section 28(6) of the Supreme Court of Judicature Act (Ireland) 1877. The Circuit Court identified a difficulty whereby the supposed "*goodbye*" letter indicated that the underlying debt had previously been held by a *different company* than Promontoria (Oyster). The offending letter stated, erroneously, that all of the rights of a company known as BCM Global ASI Ltd under the relevant loan agreement had been transferred to Everyday Finance. Counsel for the moving party accepted that this company held no interest in the loan agreement. Rather, it was at most a credit servicing

firm.

8. There was some debate between the parties and the judge as to what the appropriate course of action would be. The judge indicated that a fresh "*goodbye*" letter should be sent and suggested that it should be sent by BCM Global ASI Ltd. Counsel for Everyday Finance suggested that the letter might, instead, be sent by Beauchamps Solicitors who were acting for Everyday Finance.

9. Unfortunately, it appears that both parties came away from the hearing without a clear understanding as to what the outcome had been. There was confusion as to whether the substitution application had been determined, with the substantive proceedings being adjourned, or whether both the substitution application and the substantive proceedings had been adjourned. The moving party, Everyday Finance, appears to have thought, initially at least, that an order had been made *against* it. Accordingly, Everyday Finance filed an appeal to the High Court against the supposed order of the Circuit Court (2023 228 CA). This appeal was not pursued and was ultimately struck out, on the application of Everyday Finance, on 24 April 2024. The defendant was—and remains—of the view that the Circuit Court had *refused* the substitution application on 15 November 2023.

10. The proceedings were adjourned from time to time before the Circuit Court. The proceedings ultimately came back before His Honour Judge McAleese on 15 November 2023. On that date, an affidavit was before the court exhibiting a letter which had been sent to the defendant from Beauchamps Solicitors on 24 January 2024. The letter is headed up "*notice of transfer*" and confirms that, on 2 December 2022, Promontoria (Oyster) sold amounts owing to it in respect of the facilities to Everyday Finance. Counsel on behalf of Everyday Finance

contended that this letter satisfied the notice requirement under section 28(6) of the Supreme Court of Judicature Act (Ireland) 1877. The defendant disagreed. Subsequently, in the context of his appeal to the High Court, the defendant has sought to characterise the events on 14 May 2024 as entailing the Circuit Court improperly "*revisiting*" an order supposedly made on 15 November 2023 dismissing the substitution application.

11. At the conclusion of the hearing on 14 May 2024, the Circuit Court made an order substituting Everyday Finance as plaintiff in the title to the proceedings and directing that the proceedings be carried on thereafter with Everyday Finance, trading as Link Finance, as the plaintiff. The Circuit Court further directed that a copy of the order be served upon the defendant at his address at Redcastle, Donegal, and that the defendant be informed that he has an entitlement to contest the transfer of the loan by Promontoria (Oyster) to Everyday Finance at the hearing of the action.

12. The defendant filed an appeal against this order. The appeal had initially been listed for directions on 4 July 2024. On that date, the defendant made an application to take up a transcript of the digital audio recording ("*DAR*") of the two hearings before the Circuit Court. That application was acceded to, and an order made pursuant to Order 123 of the Rules of the Superior Courts. The hearing of the appeal was then adjourned to allow time for the transcript to be taken up. The appeal came on for hearing on 15 November 2024. Judgment was reserved until 29 November 2024.

13. Prior to the date scheduled for the delivery of the reserved judgment, counsel on behalf of Everyday Finance made an application on notice to the defendant. The purpose of the application was twofold: first, to request that delivery of the

reserved judgment be deferred, and, secondly, to seek liberty to issue a motion seeking to adduce further evidence on the appeal. The further evidence takes the form of a letter which had, supposedly, been sent to the defendant on 12 December 2022. It is alleged that the existence of this letter has only been recently discovered.

14. Everyday Finance was given liberty to bring the motion, without prejudice to the defendant's right to object to the substance of same. The motion was heard before me on 13 December 2024. I indicated to the parties that I would deliver a reserved judgment on 14 January 2025 which would address both the application to adduce further evidence and the merits of the substitution application.

NATURE OF THE ORDER MADE BY THE CIRCUIT COURT

15. Logically, the very first issue to be addressed on the appeal must be the nature of the order made by the Circuit Court on 15 November 2023. The resolution of this issue is crucial in identifying the parameters of the appeal. If, for example, the defendant is correct in his assertion that the appeal is against an order revisiting an earlier order dismissing the substitution application, then it would be necessary to consider whether the legal threshold for setting aside a final order has been met. This would require consideration of the case law cited by the defendant, including *Re Vantive Holdings* [2009] IESC 69, [2010] 2 IR 118.

16. If, conversely, Everyday Finance is correct in its assertion that no substantive order had been made on the substitution application prior to 14 May 2024, then the appeal reduces itself to an application of the well-established legal principles governing the substitution of parties.

17. It is apparent from a careful consideration of the transcript of the hearing before the Circuit Court on 15 November 2023 that the substitution application had been adjourned not dismissed. The Circuit Court, having identified a deficiency in the wording of one of the letters relied upon as giving notice of the assignment to Everyday Finance, had adjourned the motion to allow this deficiency to be remedied. Whereas the Circuit Court judge expressed himself to be "*unimpressed*" with Everyday Finance's paperwork, he did not go so far as to dismiss the substitution application. Rather, he characterised the deficiency as a technicality which was capable of "*being rapidly remedied*". The judge was careful to explain to the defendant that he had only secured a minor, procedural victory, and that, once proper notification of the assignment had been given, there would be a full hearing of the proceedings at which the defendant would have to present a compelling argument to the effect that Everyday Finance would not be entitled to be repaid the outstanding debt. The judge drew attention to the fact that no repayment had been made since December 2009. It is apparent from the transcript that the judge envisaged that, in the event the deficiency was remedied, the proceedings would continue thereafter in the name of Everyday Finance. The judge expressly adjourned *both* the motion seeking the substitution order and the substantive proceedings.

18. Even allowing that Everyday Finance did not have the benefit of a transcript at the time, it is difficult to understand the rationale for its having filed an appeal against an order supposedly made on 15 November 2023. The outcome on that occasion had been an adjournment of the proceedings. Far from giving rise to good grounds for an appeal, this was actually in ease of Everyday Finance. The criticism made by the Circuit Court of the supposed "*goodbye*" letter had been

entirely justified. Indeed, it would have been open to the Circuit Court to have dismissed the substitution application outright. Instead, the Circuit Court, in the exercise of its discretion, afforded Everyday Finance an opportunity to serve valid notice of the assignment. Everyday Finance sensibly withdrew its appeal subsequently.

19. These procedural machinations on the part of Everyday Finance have, understandably, caused confusion on the part of the defendant. One can hardly blame the defendant, who appears as a litigant in person, for inferring from the fact that Everyday Finance had filed an appeal to the High Court that the Circuit Court must have made an order favourable to him on 15 November 2023. The defendant is, again understandably, frustrated by what, from his perspective, must have seemed like a reversal of fortune when the Circuit Court ultimately made an order allowing the substitution application on 14 May 2024.

20. With the benefit of the transcript, however, it is now possible to ascertain the precise outcome of the hearing on 15 November 2023. The Circuit Court did not determine the substitution application on that occasion. The appeal to the High Court, therefore, falls to be determined by reference to the well-established legal principles governing the substitution of parties. These are set out under the next headings below.

21. Finally, it should be recorded that counsel who appeared before the High Court in these appeal proceedings is not the same counsel as had appeared in the Circuit Court.

LEGAL TEST FOR SUBSTITUTION APPLICATION

22. This matter has come before the High Court by way of an appeal from the Circuit Court. The High Court is thus exercising its statutory appellate jurisdiction

under the Courts of Justice Act 1936. Accordingly, it is necessary to consider the relevant rule under the Circuit Court Rules.

23. The substitution application has been brought pursuant to Order 22, rule 4 of the Circuit Court Rules. The rule reads as follows:

> "Where, by reason of the death, or bankruptcy, or any other event occurring after the commencement of an action, proceeding 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 action, proceeding, 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."

24. The interpretation of the equivalent provision of the Rules of the Superior Courts, i.e. Order 17, rule 4, has been considered in a number of judgments. The Court of Appeal addressed two aspects of the wording of the rule 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 rule, included events such as the assignment of loans and a chose in action. An "*event*" is not confined to an extraneous event (such as death or bankruptcy), but also embraces an event such as a contract for the sale of loans and mortgages.

25. 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 (at paragraph 20) 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. […]"

26. 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.

27. 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, [2019] 1 IR 677 (upheld by the Court of Appeal in [2020] IECA 15) 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.

28. The nature and extent of the evidence which must be adduced in support of an application under Order 17, rule 4 has also been addressed in the case law. 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.

NOTICE OF ASSIGNMENT

29. Section 28(6) of the Supreme Court of Judicature Act (Ireland) 1877 provides that an absolute assignment of a debt or other legal chose in action is "*effectual in law*" provided that "*express notice in writing*" shall have been given to the debtor. The assignment is deemed to have been effectual in law from the date of such notice. Thereafter, the assignee (i) will be entitled to pursue all legal remedies without the concurrence of the assignor; and (ii) will have the power to give a good discharge for the debt or legal chose in action. In practical terms, this means that the assignee can pursue proceedings in their own name, without having to join the assignor as a party; and that the debtor may make payments to the assignee safe in the knowledge that such payments go towards reducing the debt and that the assignor no longer has any interest in the debt.

30. The nature of the notification required has been discussed in detail in *AIB Mortgage Bank v. Thompson* [2017] IEHC 515, [2018] 3 IR 172. The High Court (Baker J.) explained the purpose of the section as follows (at paragraph 14 of the reported judgment):

> "An assignment may be valid under s. 28(6) as between assignor and assignee if it is an absolute assignment made by writing by the assignor. However, as between the assignee and the original debtor or obligor, the power to give a good discharge for the debt without the concurrence of the original creditor vests in the assignee only and insofar as express notice in writing has been given to the debtor."

31. Baker J. then summarised the principles governing notification as follows (at paragraphs 48 to 50, and paragraphs 52 and 53, of the reported judgment):

> "The authorities suggest that a court will look to the substance and not the form of a notice.
>
> I consider that in order to be a valid notice under s. 28(6) the debtor must be given express notice in writing of an assignment of his debt to another, that other must be identified, and the notice must contain sufficient information to enable the debtor to know with reasonable certainty that the assignment did assign the debt so that he may without acting at his peril pay the debt to the identified assignee. The absence of a date is relevant, and this must be so because s. 28(6) expressly provides in its terms that the date of the notice to the debtor is the effective date of the assignment for the purposes of the assignment at law.
>
> The 1877 Act does not make provision for who is to give the notice in writing of the assignment.
>
> […]
>
> … it would be wrong to interpret the statutory requirements as imposing technical or procedural requirements which are not therein expressed. The test is, in the circumstances of each case, whether there was sufficient information to enable the debtor to know not merely that a third party claims to own his debt, and claims to have the right as a matter of law to give a discharge for that debt, but that that party has taken an assignment or assurance of that debt from the party with whom he or she originally contracted.
>
> While a notice does not have to be sent with the intention of constituting a statutory notice, a notice must be sufficiently clear as the legislation requires that the notice be express. This precludes the argument advanced by the plaintiff that it is sufficient that documents sent to a debtor by implication identify an assignment, and I do not consider that s. 28(6) leaves open an argument that a notice which impliedly identifies an assignment can be sufficient, or that a prior

> general consent performs the statutory function of a notice. A notice must be given, it need not be formal, it need not refer to the statute, but it must be an express notice of an assignment and not merely a claim to the debt by another party. The existence of a prior assignment ought not to be implied. There is nothing in the statute to my mind which suggests that the notice must be contained in one document and for that reason the joinder of documents may be sufficient to constitute a notice of assignment."

32. In applying these principles to the facts of the case before it, the High Court in *Thompson* ruled that the correspondence sought to be relied upon by the assignee did not constitute adequate notice of the assignment. Whereas it was apparent from the correspondence that the assignee claimed to own the benefit of the relevant loan agreement, the correspondence did not identify when and by what means this had happened. The debtor was not expressly told that the benefit had been transferred from the original creditor to the related company now claiming the benefit of the debt. The High Court held that a person receiving such a letter would be perfectly entitled to ask how or by what means he or she ceased to have an obligation to the original creditor from whom the money had been borrowed.

APPLICATION TO ADMIT FURTHER EVIDENCE

33. Everyday Finance wishes to adduce further evidence on the appeal. It appears from the grounding affidavit that officials within Everyday Finance have identified, since the hearing of the appeal on 15 November 2024, a copy of a letter said to have been sent to the defendant ("*the letter*"). The letter purports to be from Promontoria (Oyster) and is dated 12 December 2022. The letter is addressed to the defendant at the incorrect postal address in Derry. Everyday Finance wishes to rely on this letter in support of an argument that it has complied with the notice requirements under the Supreme Court of Judicature

Act (Ireland) 1877.

34. The default position is that where a case has been determined by the Circuit Court on the basis of affidavit evidence only, i.e. without oral evidence, then the appeal to the High Court is determined by reference to the same affidavit evidence. If a party wishes to adduce new evidence, it must apply to the High Court for special leave to do so. The application for special leave is made pursuant to section 37 of the Courts of Justice Act 1936 and Order 61 of the Rules of the Superior Courts.

35. The legal test governing an application to adduce new evidence is analogous to that governing an application to adduce further evidence on an appeal from the High Court. The classic statement of the legal test is to be found in *Murphy v. Minister for Defence* [1991] 2 IR 161 (at 164):

> "1. The evidence sought to be adduced must have been in existence at the time of the trial and must have been such that it could not have been obtained with reasonable diligence for use at the trial;
>
> 2. The evidence must be such that if given it would probably have an important influence on the result of the case, though it need not be decisive;
>
> 3. The evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, though it need not be incontrovertible."

36. As appears, one of the criteria to be considered is whether or not the party, who seeks to adduce the new evidence, could have obtained same at the time of the trial by reasonable diligence.

37. It will be recalled that the substitution application had been adjourned by the Circuit Court in November 2023 for the precise purpose of allowing Everyday Finance to remedy the deficiencies in its proofs in relation to the notice of assignment. Everyday Finance should have taken this opportunity to ensure that

all relevant correspondence would be put before the Circuit Court. No proper explanation has been provided as to why the letter was not identified at this time. The explanation that there was confusion caused by the letter referring to the *customer* number rather than the *account* number is not good enough in the modern age of digitised records. It should have been well within the capacity of the officials to locate and identify all relevant correspondence by searching against both numbers.

38. Everyday Finance, having been allowed indulgence by the Circuit Court, appears to have squandered that opportunity to mend its hand. It would not be in the interests of justice to show yet further indulgence to Everyday Finance by allowing it to adduce this letter now. The rationale underlying the restriction on the introduction of new evidence on appeal is to avoid endless litigation whereby a party, who has been unsuccessful at first instance, seeks to mend their hand by introducing new evidence which would have been available to them at the time of the first-instance hearing. Parties are expected to bring forward their best case for adjudication. The disruptive effects of allowing a non-diligent party to adduce evidence belatedly are well illustrated by the circumstances of this case. Here, the belated application to adduce new evidence necessitated the reopening of an appeal in respect of which the hearing had already concluded and judgment had been reserved. This will have resulted in both parties incurring the time and expense of a further hearing, and, more generally, is not conducive to the efficient use of scarce judicial resources. Accordingly, the application to adduce further evidence is refused. Having regard to this ruling, it is not necessary to address the separate concern raised by the defendant as to the authenticity of the letter.

SUBSTITUTION APPLICATION: DISCUSSION AND DECISION

39. It is proposed to address, first, whether there is *prima facie* evidence of the transfer of ownership of the registered charge and the underlying debt; and, secondly, whether there is *prima facie* evidence that the statutory notice requirement has been complied with.

40. The evidence relied upon in support of this substitution application is set out, principally, in the affidavit of Andrew McCudden sworn on 23 June 2023. As to the registered charge, the affidavit exhibits a copy of the folio from the Land Registry: DL62574F. The folio indicates that Everyday Finance is the owner of the charge previously held by Ulster Bank Ireland.

41. Section 31 of the Registration of Title Act 1964 provides that the register shall be conclusive evidence of any right, privilege, appurtenance or burden appearing on the register. The Court of Appeal in *Tanager DAC v. Kane* [2018] IECA 352, [2019] 1 IR 385 held, *inter alia*, that the correctness of the register cannot be challenged by way of defence in summary possession proceedings, and that a court hearing an application for possession is entitled to grant an order at the suit of the registered owner of the charge, or his or her personal representative, provided it is satisfied that the plaintiff is the registered owner of the charge and that the right to possession has arisen and become exercisable. This decision has since been approved of by the Supreme Court in *Bank of Ireland Mortgage Bank v. Cody* [2021] IESC 26, [2021] 2 IR 381. Having regard to these principles, Everyday Finance has met and exceeded the threshold of *prima facie* evidence in relation to the transfer of ownership of the registered charge.

42. As to the transfer of the underlying debt, Everyday Finance has exhibited a deed

entitled "*Global Deed of Transfer*". The schedule to the deed identifies the loan in respect of the property at Redcastle, County Donegal as one of the loans which has been transferred. This meets the threshold of *prima facie* evidence.

43. It is necessary next to consider whether the notice requirement under the Supreme Court of Judicature Act (Ireland) 1877 has been met. It should be explained that the circumstances of the present case are distinguishable from those of some of the earlier cases in that here the assignment has prompted a substitution application in the course of the proceedings. On the facts of *Thompson*, by contrast, the assignment had taken place prior to the institution of the proceedings. Moreover, the substitution application has been made on notice to the defendant notwithstanding that such an application may properly be made *ex parte*. The practical significance of this distinction is that the defendant in the present case has been put on notice, by virtue of the substitution application, of the asserted transfer and has been provided with a copy of the updated folio and of the global deed of transfer. It is at least arguable that the papers grounding the substitution application represent "*express notice in writing*" of the asserted transfer to Everyday Finance. Put otherwise, even if one assumes that the earlier correspondence was deficient by virtue of its wording and/or having been sent to the incorrect postal address, it is at least arguable that the defendant has been on express notice of the asserted transfer since the date upon which he had been served with the motion and grounding affidavit.

44. Of course, the statutory wording indicates that an assignment is deemed to have been effectual in law from the date of notice only. It follows that a delay in notifying a debtor of an assignment may adversely affect an assignee in that other parties may have gained priority in the interim. There is, however, no suggestion

that this has occurred in the present case.

45. It will be recalled that the principal purpose of the notice requirement is to allow a debtor to make payments to the assignee safe in the knowledge that the assignee is able to give a good discharge for the debt without the concurrence of the original creditor, i.e. the assignor. Having regard to this principal purpose, there is an air of unreality to the defendant's objection. This is not a case where a debtor, who has been making regular mortgage repayments, has suddenly been told to make payments to a different entity. In such a scenario, the debtor would, understandably, be anxious to ensure that the assignee is able to give a good discharge. No such considerations apply in the present case in circumstances where no payment has been made pursuant to the loan agreement since December 2009. The defendant does not, for example, assert that he is in a quandary in relation to whom he should make the next mortgage repayment.

46. Having regard to the foregoing, Everyday Finance has put forward enough by way of evidence to meet the *prima facie* threshold. There is a respectable argument that the solicitors' letter of 22 January 2024, which confirms that there had been a transfer from Promontoria (Oyster) to Everyday Finance on 2 December 2022, is sufficient notice for the purpose of the statutory requirement. Even if it is not, there is an alternative argument that the papers grounding the substitution application represent "*express notice in writing*" of the asserted transfer to Everyday Finance. It is not necessary, for the purpose of this procedural application, to reach a definitive finding on either of these points. It remains open to the defendant to contest the validity of the transfer at the substantive hearing of the proceedings before the Circuit Court.

CONCLUSION AND PROPOSED FORM OF ORDER

47. The moving party, Everyday Finance, has met the legal threshold governing a substitution application made in advance of a substantive hearing of the proceedings. There is *prima facie* evidence of the transfer of ownership of the registered charge and the underlying debt (paragraphs 39 to 42). Further, there is *prima facie* evidence that the statutory notice requirement, under section 28(6) of the Supreme Court of Judicature Act (Ireland) 1877, has been complied with (paragraphs 43 to 46).

48. Accordingly, the appeal against the substitution order made by the Circuit Court on 14 May 2024 is dismissed. The High Court order will indicate that Everyday Finance's motion to adduce new evidence has been refused (paragraphs 33 to 38). The proceedings will now return to the Circuit Court for the substantive hearing of the application for an order for possession. It will be a matter for the Circuit Court, as part of its case management, to determine whether Everyday Finance should be permitted to exhibit the letter of 12 December 2022 for the purpose of the substantive hearing. This judgment only excludes reliance on same for the purpose of the substitution application.

49. As to the costs of the appeal proceedings, my *provisional* view is that there should be no order as to costs. Whereas Everyday Finance has been successful in resisting the appeal, there are two factors which potentially militate against a costs order in its favour. First, Everyday Finance's conduct in pursuing, and then withdrawing, an appeal against an order supposedly made by the Circuit Court on 15 November 2023 caused confusion. It prolonged these appeal proceedings in that it became necessary for the parties to take up a copy of the transcript of the hearings before the Circuit Court, and for the High Court to rule

on the nature of the order made by the Circuit Court. Secondly, the belated application to adduce new evidence necessitated the reopening of an appeal in respect of which the hearing had already concluded and judgment had been reserved. This will have resulted in both parties incurring the time and expense of a further hearing, and, more generally, is not conducive to the efficient use of scarce judicial resources. This litigation conduct is a matter which the High Court would, in principle, be entitled to take into account in allocating costs.

50. If and insofar as the defendant may have incurred the expense of taking up the transcripts, my *provisional* view is that he should be entitled to recoup such expense from Everyday Finance.

51. If either party wishes to contend for a different form of costs order than that provisionally proposed, they will have an opportunity to do so when these proceedings are next listed before the High Court on 28 January 2025 at 10.30am.

Appearances
Rudi Neuman for the moving party, Everyday Finance, instructed by Beauchamps LLP
The defendant appeared as a litigant in person