

Neutral Citation No: [2021] NICA 29

Ref: MOR11512

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 12/05/2021

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

—————
MARTIN KEVIN McGEE

Applicant/Appellant

-v-

MORAG FINANCE LIMITED

and

AMBER HOMELOANS LIMITED

Respondents/Respondents

—————
Before: Morgan LCJ and McAlinden J
—————

MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal against a decision of Madame Justice McBride who dismissed the appellant's appeal against a decision of the Registrar of Titles in Northern Ireland issued on 16 January 2019 whereby he dismissed the appellant's notice of objection to an application for the registration of transfer of charges from the second respondent to the first respondent in respect of land situate at 9 Clontycarty Lane, Tynan, Co Armagh and contained within Folio 30147 Co Armagh ("the property"). The court considered the case suitable for determination on the papers having offered both parties the opportunity to make written submissions.

Background

[2] At all material times the ownership of the property was registered in the joint names of the appellant and Bernadette Patricia McGee. They executed a charge deed with the second respondent on 17 July 2007 in respect of the property. The deed incorporated a number of mortgage clauses set out in the schedule and in particular clause 12 provided as follows:

"12.1 The lender may at any time while any part of the principle sum and additional borrowing remain owing to the lender:

12.1.1 Transfer charge or otherwise dispose of the benefit of all or any part of the debt due from the borrower to the lender and the mortgage and any other security held by the lender to any third party whether or not a building society or company associated with a building society without reference to or obtaining the consent of the borrower.”

[3] The appellant and his wife defaulted on repayment and the second respondent brought repossession proceedings. It was granted an order for possession on 14 December 2009 but enforcement of that order is the subject of continuing proceedings. In an affidavit sworn on 29 June 2011 the appellant stated that at that time there were arrears of approximately £33,500 in respect of the property.

[4] By way of a mortgage sale agreement dated 7 April 2017 the second respondent, Amber Homeloans Ltd sold certain loans to the first respondent, Morag Finance Limited. The mortgage sale agreement included the sale and transfer of the loan in respect of the property. In order to give effect to the transfer the second respondent applied in the Land Registry on 12 December 2017 to transfer the charges from Amber Homeloans Ltd to Morag Finance Limited.

[5] On 17 January 2018 the appellant lodged a notice of objection to the transfer stating:

“Take notice, we do not consent to the application lodged 12/12/2017, being recorded to the Folio 30147 of the estate of Martin Kevin McGee, our reasons for objections are:

1. The party known as Morag Finance Ltd has not provided any evidence of fact that they have a right to have their name registered on this title.
2. There is no evidence of fact that Morag Finance Ltd has lawful standing in this matter.
3. The application to register Morag Finance Ltd has been challenged in the High Court of Northern Ireland, Chancery Division, Case Ref 2009/023383.
4. We believe there must be in existence a Deed of Transfer of Ownership between Amber Homeloans Ltd and Morag Finance Ltd, we require sight of same before registration of title change.

5. Precedent 17N - Transfer of Ownership charge, 2R Form 32, which solicitor attested this application 2017/881805, Pauline Walker of Tughans Solicitors Belfast.

6. We believe, Tughans Solicitors, Belfast are not on record in the Royal Courts of Justice Northern Ireland Chancery Division for Amber Homeloans Ltd and Morag Finance Ltd, so they have no legal standing or locus standi to file an application with Land Registry of Northern Ireland to transfer ownership of charge from Amber Homeloans to Morag Finance Ltd. An application in this matter can only be made by Valerie Gibson and Eversheds Sutherland Belfast, not by Pauline Walker of Tughans Solicitors Belfast."

The Deputy Registrar dismissed the objection and proceeded with the registration as the objector had not shown any valid cause for the objection.

[6] On appeal to the High Court in addition to the matters set out in the notice of objection the appellant contended that the second respondent, Amber Homeloans, "did not have the right to transfer the chose in this action." The appellant also submitted a document dated 3 August 2017 described as a deed of trust signed by the appellant as settlor and entrusting the property to two named directors of Amber Homeloans Ltd on trust for the appellant as beneficiary. No application was made to the Land Registry in respect of this document so there was no transfer of the land (see section 34(3) below). The document had no impact on the validity of the registered charge the subject of these proceedings.

Consideration

[7] The Land Registration Act (Northern Ireland) 1970 is an Act to revise the law relating to the registration of the title to land and extend the compulsory registration of the title to land. Section 34 provides for transfers of registered land:

"(1) A registered owner of any land may transfer the land or any part thereof.

(2) There shall be executed on any such transfer a document in the prescribed form, or in such other form as is approved or allowed by the Registrar.

(3) Any such transfer shall be completed by the registration of the transferee as owner of the land, but,

until such registration, the document shall not operate to transfer the land.

(4) On registration of a transferee of any land as full owner of the land, the document of transfer shall operate as a conveyance by deed within the meaning of the Conveyancing Acts, and there shall be vested in the registered transferee the land transferred...

(8) Land Registry Rules may provide for the modification of the provisions of this section in its application to the transfer of charges."

[8] Rule 67 of the Land Registry Rules (Northern Ireland) 1994 provides for the transfer of charges and states as follows:

"67.-(1) A transfer of a charge by the registered owner thereof shall be in Form 32 with such modifications as the case may require.

(2) On registration of the transferee as owner of the charge, the document of transfer shall operate as a conveyance by deed within the meaning of the Conveyancing Acts and the transferee shall -

- (a) have the same title to the charge as, under the 1970 Act, a registered transferee of land other than a charge would have to such land under a transfer for valuable consideration or, as the case may be, without valuable consideration; and
- (b) have, for enforcing his charge, the same rights and powers in respect of the land as if the charge had been created in his favour originally;

And the provisions of section 34(4) of the 1970 Act in its application to the transfer of charges are modified accordingly."

[9] The form prescribed by the Land Registry Rules for an application for registration is Form 100E. The Department of Finance helpfully publishes precedents recommended for use in the adaptation of Form 32 for the transfer of charges and in this instance the appropriate form was precedent 17N. The first respondent lodged Form 100E on 12 December 2017 together with Form 32 (precedent 17N) executed as a deed dated 10 November 2017 between the first and second respondents under which the second respondent transferred the multiple

charges set out in the mortgage sale agreement, including the charge affecting the subject property, to the first respondent.

[10] We agree with the learned trial judge that the first respondent complied with the provisions of Rule 67 of the Land Registry Rules (Northern Ireland) 1994 and lodged the necessary documents to obtain registration of the transfer of the charges.

[11] The transfer deed of 10 November 2017 operated to transfer the ownership of the charge to the first respondent. The first respondent accordingly had the right to be registered as owner of the charge. The identity of the solicitor making the application was not relevant as there was nothing to suggest that they were acting without authority. We agree with the learned trial judge that the document entitled "Private Trust" had no legal meaning. There was no transfer of ownership of the land to the supposed trustees.

Conclusion

[12] In our view the judge carefully took into account all material factors and correctly applied the law. There is no proper basis upon which to criticise her decision. The appeal is dismissed. The appellant has seven days from the date of this judgment to show cause why he should not be ordered to pay the costs of the appeal.