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

ICOS No: 06/111558/12

Delivered: 18/07/2022

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

**ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION**

Between:

JOHN CHARLES QUINN and ITA BERNADETTE QUINN

Defendants/Appellants

and

SWIFT FIRST LIMITED

Plaintiff/Respondent

**Mr John Charles Quinn appeared as a Litigant in Person
Mr Hanna QC (instructed by Wilson Nesbitt Solicitors) for the Respondent**

Before: Keegan LCJ and Maguire LJ

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This case arises in the context of repossession proceedings which began some 15 years ago in relation to a property at 196 Bush Road, Dungannon, belonging to the first and second named defendants Mr and Mrs Quinn. The history of the case is set out in the judgment of McBride J delivered on the 28 June 2018. This was affirmed by the Court of Appeal in a judgment reported at [2019] NICA 60.

[2] Given previous decisions we will not repeat the history in great depth. Suffice to say that by a deed dated 16 March 2016 a mortgage was advanced to the defendants by the plaintiff in the sum of £140,000 secured against the premises at 196 Bush Road. We note from the judgment of McBride J that when she heard the case the amount then due and owing was £289,138.17. There were arrears of £99,619.14 on the basis of a monthly instalment of £1,389. McBride J noted that the last payment was a payment of £140.00 was made on 4 May 2018 from the benefits

agency and that the property was in negative equity. We have not heard that there have been further payments made towards the debt or that any proposals to discharge the debt have been made. Inevitably, the amount of the debt will have risen with the further passage of time.

[3] As the defendants fell into arrears on the mortgage repayments court proceedings ensued. On 6 December 2006 an originating summons was issued by the plaintiff mortgagee seeking repossession of the property due to default of the mortgage payments pursuant to Order 88 of the Rules of the Court of Judicature (Northern Ireland) 1980. That application was granted.

[4] This appeal is concerned with the subsequent refusal of the High Court to grant a stay of enforcement of the repossession order. That decision came after a long line of court hearings which we summarise below.

Previous Court Proceedings

- [5] (i) On 18 June 2007 Master Ellison made an order for possession in relation to the property but ordered that it would not be enforced without leave whilst the defendants paid a sum of £1,600 per month to cover arrears and ongoing monthly instalments.
- (ii) On 8 March 2013 the plaintiff applied for leave to enforce the possession order made on 18 June 2007 on the ground of the defendants default in making payments.
- (iii) Between March 2013 and November 2017 it is recorded that the defendants entered a defence challenging the making of the possession order and raising various counterclaims against the plaintiff.
- (iv) On 17 November 2017 the defendants decided to appeal the possession order and applied for an extension of time to do so.
- (v) On 16 February 2018 McBride J refused the application for an extension of time to appeal.
- (vi) On 28 June 2018 on the hearing of the plaintiff's application for leave to enforce the possession order an order was granted by McBride J granting the plaintiff's application for leave to enforce the order.
- (vii) On 4 July 2018 the defendants filed an appeal to the Court of Appeal against the decision of McBride J.
- (viii) On 13 November 2019 the Court of Appeal by way of a judgment delivered by Stephens LJ dismissed the defendants' appeal against the order of McBride J dated 20 June 2018.

- (ix) On 26 February 2020 the first defendant applied for an order staying enforcement of the possession order on various grounds.
- (x) March 2020 to November 2021 – the first defendant’s application for a stay of enforcement is listed but postponed due to the Covid-19 pandemic and enforcement of possession is stayed administratively on 27 April 2020. Therefore, an eviction which had been scheduled for 5 May 2020 was cancelled by the Enforcement of Judgments Office.
- (xi) 24 June 2021 – there was reactivation notice filed with the court pursuant to the Covid-19 Practice Direction for hearing.
- (xii) On 16 November 2021 Master Hardstaff made an order dismissing the first defendant’s application for a stay of enforcement.
- (xiii) On 24 November 2021 the first defendant filed a Notice of Appeal to the High Court against the order of Master Hardstaff arguing that the stay should be applied and maintaining three grounds of appeal:
 - (a) That enforcement should be stayed because there is a pending action inclusive of claim and counterclaim.
 - (b) That the first defendant wishes to produce evidence of tender of payment and discharge of the debt by way of a private trust and equity.
 - (c) That enforcement would breach various human rights of the first defendant and his wife by killing them or causing a serious risk to their lives.
- (xiv) On 2 February Humphreys J dismissed an appeal from the decision of Master Hardstaff and affirmed the order. Humphreys J also refused leave to appeal the order.

Statutory provisions

[6] The Judicature (Northern Ireland) Act 1978 in section 35(2)(g) provides as follows:

- “(2) No appeal to the Court of Appeal shall lie –
 - (g) without the leave of the judge or of the Court of Appeal, from any interlocutory order or judgment made or given by a judge of the High Court ...”

[7] The Administration of Justice (Northern Ireland) 1970 Act provides for application to be made for a stay of repossession proceedings in certain circumstances, the parameters of which are defined as follows:

- “(2) The court –
- (a) may adjourn the proceedings, or
 - (b) on giving judgment, or making an order, for delivery of possession of the mortgaged property, or at any time before the execution of such judgment or order, may –
 - (i) stay or suspend execution of the judgment or order, or
 - (ii) postpone the date for delivery of possession,
- for such period or periods as the court thinks reasonable.”
- (4) The court may from time to time vary or revoke any condition imposed by virtue of this section.”

[8] The power to grant a stay of enforcement of a repossession order is discretionary. This is explained at paragraph [28] of the judgment of McBride J wherein she states that a stay may be granted subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage as the court thinks fit:

“if it appears to the court that in the event of the court exercising the power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage ...”

This Appeal

[9] On 14 February 2022 the first named defendant filed a notice of appeal to the Court of Appeal seeking leave to appeal the order refusing a stay of enforcement made by Humphreys J. The purported basis for this application is expressed in the following brief terms contained in the notice:

- (a) Denied equality of arms.
- (b) Denied right of audience for McKenzie Friend.
- (c) Denied jurisdiction.

[10] The first observation we make is that the above grounds are not well formed. Patently the notice of appeal does not comply with Order 59 Rule 3(2) of the Rules of the Court of Judicature (Northern Ireland) 1980. We note that in the previous Court of Appeal ruling in 2019 Stephens LJ allowed a degree of latitude in relation to an identical failing. It is unfortunate that the same issue has arisen again. We provide a warning in this and other cases that if appeals come by way of ill-defined grounds amounting to complaints rather than points of adjudication the Court of Appeal may deal with non-compliant notices by way of administrative adjudication. This approach will further the overriding objective and the administration of justice.

[11] The purported grounds of appeal before this court are all of a procedural nature. However, it is clear that the first named defendant also wishes to rely upon the substantive points raised before Humphreys J in support of his application. These are the points set out at paragraph 5(xiii) above. Therefore, we have proceeded to look at the case in the round. As this is effectively a renewal of leave application we have considered the substance of the application for ourselves. It follows that this court can correct any procedural errors if there were any in considering the substance of the application for leave to appeal.

[12] We have considered the written and oral submissions made in reaching our conclusion. We have also allowed the first named defendant to have the assistance of a McKenzie Friend in this court.

Consideration of the application for leave to appeal

[13] Leave to appeal will only be granted if there is some merit in the substantive application. The substantive application is for stay of enforcement of a repossession order made in 2006.

[14] As a stay is an interlocutory order an application for leave to appeal should be brought within seven days. In this case whilst dated within time, the notice was served on the plaintiff six days out of time. Mr Hanna QC did not pursue this point with any great vigour. In the circumstances, bearing in mind that the first named defendant is acting as a litigant in person, we do not consider the delay is fatal to this particular application. We will therefore proceed to consider the substantive and procedural issues.

[15] The application before Humphrey's J was mounted on three fronts relating to:

- (i) a pending action inclusive of claim and counterclaim.
- (ii) evidence of tender of payment and discharge of the debt by way of a private trust and equity: and

- (iii) a human rights argument that repossession of the first defendant and his wife would kill them or causing a serious risk to their lives.

[16] We can deal with these three claims in relatively short compass. First, in relation to points (i) and (ii) the obvious point is that there was no evidence put before us that has not already before previous courts. McBride J and the Court of Appeal have comprehensively dealt with the substance of these claims and no new claim has merged of any substance before us. In relation to the claim that "*payment has been tendered*" we note the judgment of Stephens LJ at paragraph [12] where he said:

"We agree with the conclusions of the judge that these documents are legally meaningless. They do not constitute the tender of payment. There is no value or worth whatsoever in whatever purports to have been created. In any event the creation of a trust (however valuable) does not constitute a tender of payment."

We therefore dismiss both of these grounds.

[17] The third ground is a purported human rights challenge. This court has received no evidence to substantiate the strong claims that death or serious injury would ensue upon repossession. We understand the distress that these types of proceedings inevitably cause, but the reality is that everyone who obtains a mortgage must understand the consequences of non-payment of the debt. This argument does not result in the grant of a stay of enforcement.

[18] Overall, there is no substantive reason why this court would grant leave to appeal the refusal of a stay of enforcement of the repossession order made so long ago in circumstances which have not changed.

[19] In addition, we do not consider there has been any procedural unfairness in this case for the following reasons. Humphreys J allowed Mr Quinn to have the assistance of a McKenzie Friend, Mr Scullion. We similarly allowed the assistance of the same McKenzie Friend. There was no application for a right of audience in this court which is unsurprising given that the role of a McKenzie Friend is to assist and advise. Mr Quinn was also content to rest upon his comprehensive written submissions and some oral submissions that he made to us. Therefore, we had the benefit of considering all of the points that Mr Quinn wanted to make and we do not consider he was placed at any disadvantage.

[20] This first named defendant had legal advice for a considerable period during the history of proceedings. He the option of seeking legal advice for this application. Therefore, no valid argument can be made in relation to equality of arms. If anything, the first named defendant has been afforded greater latitude than the respondent to make all of the arguments that he wanted to make.

[21] The final procedural point is described as a “denial of jurisdiction.” There is no merit in this submission whatsoever. The court was clearly empowered to consider this case and exercise a discretion pursuant to the 1970 Act. This is a baseless ground of appeal.

Conclusion

[22] Accordingly we refuse the application for leave to appeal the order of Humphrey’s J. In truth, this was a hopeless application and a repeat of previous arguments already determined at first instance and in a previous appeal to this court. Our conclusion means that a stay of enforcement will not be granted in relation to the repossession order which has been in place for some considerable time. Sadly, this is another example of a case where a debt has accrued and there really is no alternative for the mortgagee other than to seek repossession.

[23] Accordingly, the application is dismissed.

Postscript: 25th July 2022

[24] Immediately after the judgment was delivered on 18 July 2022 Mr Quinn addressed the court and submitted that he had on 15 July 2022 tendered payment of the entire loan in the sum of £389,886.64 by way of “cash” payment by special delivery post. Mr Hanna QC was afforded one week to check the position. Upon doing so his solicitor informed us in correspondence that no cash payment had in fact been made and all that was received was correspondence from Mr Quinn titled ‘Private Notice’ which purports to settle the debt.

[25] There is nothing in the above that alters our judgment. Mr Quinn’s latest arguments have been raised before under various guises and are unconvincing and unsound in law. The application is dismissed. We have also determined that the plaintiff is entitled to costs.