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Judgment: approved by the Court for handing down | *Delivered:* **09/01/2020**
*(subject to editorial corrections)**

12/72517

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

SANTANDER UK PLC

Plaintiff;

and

EAMONN SCULLION

First-Named Defendant;

and

EILEEN SCULLION

Second-Named Defendant.

McBRIDE J

Introduction

[1] This is an application by the plaintiff for a possession order in respect of property situate and known as 61B Ballymacombs Road, Portglenone, Londonderry BT44 8NT ("the property").

[2] The plaintiff was represented by Mr Gibson of counsel. The first-named defendant appeared as a litigant in person. The second-named defendant did not appear and was not represented.

Background to Proceedings

[3] Proceedings were originally commenced by way of originating summons dated 26 July 2011, by which the plaintiff sought an order for possession of the property pursuant to Order 88. The first-named defendant appeared before the

Master on 17 November 2011 when the originating summons was adjourned. Thereafter the defendants filed a joint affidavit sworn on 30 November 2011.

[4] On 1 December 2011 Master Ellison, after hearing the solicitor for the plaintiff and the first-named defendant in person, made an order for possession of the property. This order was served personally on the second-named defendant.

[5] On 19 December 2011 the defendants appealed the order for possession and lodged a supporting affidavit sworn on 19 December 2011.

[6] The appeal was heard by Deeny J who made a ruling on 24 May 2012 that the originating summons be converted into a writ action. In the course of his judgment Deeny J raised a number of issues in respect of the deed of mortgage. He queried, firstly, whether it was properly attested; secondly, whether it was "signed, sealed and delivered"; and thirdly whether it was accurately completed as it only included partial details of the postal address of the property and misspelled the name of the property. As a result of the discrepancies in description of the property and the unsatisfactory state of the map attached to the Indenture of Sale whereby the lands were originally conveyed to the defendants, Deeny J considered that an essential proof may not be before the court namely that the defendants conveyed the piece of land they owned to the plaintiff. He opined that the plaintiff could call a surveyor to prove that the mortgage property was one and the same as the lands identified in the map attached to the Indenture of Sale.

[7] On 29 June 2012 the plaintiff issued a writ seeking delivery up by the defendants to the plaintiff of possession of the property.

[8] The defendants entered an appearance on 11 July 2012 and a "defence form" in which they set out the basis upon which they disputed the plaintiff's claim.

[9] In its Reply to Defence the plaintiff, at paragraph 4, denied that there had been any sale or securitisation of the mortgage. This however was inaccurate as the mortgage had in fact been assigned to Abbey Covered Bonds and then reassigned to the plaintiff. The Master granted leave to the plaintiff to amend the pleadings to correct this error. The defendants appealed the Master's decision and Deeny J affirmed the Master's decision.

[10] Thereafter there was a prolonged discovery process before the Master which took over one year to complete. Lists of discovery were eventually exchanged between the parties and the matter was then listed before this court for review and thereafter listed for hearing.

Preliminary Applications

[11] Prior to the hearing the plaintiff made an application by way of summons and affidavit to amend the title of the plaintiff from Santander (UK) plc to Santander UK plc pursuant to Order 20 Rule 5(1) of the Rules of the Court of Judicature (Northern Ireland) 1980.

[12] The application was grounded on the affidavit of Ms Surgeon, solicitor, sworn on 13 November 2019.

[13] Ms Surgeon averred that she was a solicitor in A & L Goodbody Solicitors, the solicitors on record for the plaintiff. She averred that the title to the proceedings namely Santander (UK) plc ("with brackets"), was inserted by the solicitors who had carriage of the case prior to the involvement of A & L Goodbody. She was unable to explain why the brackets were inserted but she indicated she had been informed by Miss M Serin, employee of the plaintiff, that the plaintiff's correct title is Santander UK plc (i.e. "without brackets").

[14] Ms Surgeon further averred that she had conducted a company search in respect of Santander UK plc and this showed the title without brackets.

[15] Mr Gibson submitted that the need for the amendment arose due to an administrative error and he further submitted that the identity of the plaintiff was clear and no injustice or prejudice would be caused to the defendants in granting the amendment. He accepted that the bank should be responsible for the costs of the application because it was its error which led to the need to make the application to the court. He submitted that the defendant was not entitled to the costs of defending the action as he should have consented to the application because it was obviously an administrative error.

[16] The first defendant submitted that the court should not amend the proceedings because the writ did not comply with Order 7(5)(2) and Order (6) which required the writ to be signed. Secondly he submitted that Ms Surgeon's affidavit did not comply with Practice Direction 5/2005 Schedule 1 paragraph 1 and Order 41 rule 5 and was therefore inadmissible. He thirdly submitted that he suspected, but accepted he had no evidence of, fraud.

Consideration of the amendment application

[17] After hearing submissions on this application I indicated that I would reserve my position and rule on the point after hearing the substantive case so that I could consider whether granting the amendment would in any way cause injustice or prejudice to the defendants.

[18] Order 20 rule 5 provides as follows:

> "5. - (1) Subject to Order 15 rules 6, 7 and 8, and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> …
>
> (3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable

doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued."

[19] The Supreme Court Practice 1999 Volume 1, paragraph 20/8/6, commenting on the equivalent England and Wales provision, states as follows:

> "It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made `for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings'. See per Jenkins LJ in *GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 1 WLR 1216 at 1231:
>
> …
>
> It is a well-established principle that the object of the court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights … I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace … It seems to me that as soon as it appears that the way in which a party has framed it case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in that case is a matter of right.' (Per Bowen LJ in *Cropper v Smith* [1883] 26 Ch. 700 at 710-711) …
>
> …
>
> However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without an injustice to the other side. There is no injustice if the other side can be compensated by costs (per Brett MR *Clarapede v Commercial Union Association* [1883] 32 WR 262 at 263)."

[20] Further, at paragraph 20/8/19 under the heading, "*Correcting Name of Party*" the Supreme Court Practice states as follows:

> "An amendment to correct the name of a party may be allowed, even if made after the expiry of any relevant period of limitation and even if it is alleged that the effect of the amendment will be to substitute a new party, provided the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading, or such as to cause any reasonable doubt as to the identity of the person intending to sue or to be sued – *Rodriguez v Parker* [1967] 1 QB 116 … An amendment to correct the name of a party may be allowed, … where it is plain that the mistake was genuine and the defendant knew that the plaintiff intended to sue him as a person against whom the claim was being made'."

[21] I am satisfied that there is no company called Santander (UK) plc. The only Santander company is one without brackets around the words UK as is confirmed in the Company Register. I am further satisfied that the plaintiff is the successor in title of Abbey National plc. as appears from Practice Direction 3/2010 issued by the Lord Chief Justice on 4 February 2010 Abbey National plc changed its name to Santander UK plc, without brackets. I am therefore satisfied that the correct name of the plaintiff is without brackets and that the error in the title of the plaintiff arose as a result of an administrative error.

[22] I further find that amending the plaintiff's title would not cause any prejudice or injustice to the defendants. The defendants were unable to point to any such injustice or prejudice. After hearing the substantive evidence in this case I am satisfied that the defendants knew they were dealing with Abbey National plc when they received the original mortgage offer and when they entered into the mortgage deed. I am further satisfied that thereafter they knew that Santander UK plc was the successor in title to Abbey National plc as they received bank statements and letters from Santander UK plc. Accordingly, I find that there is no prejudice or injustice to the defendants in amending the title.

[23] I reject the submissions made by the first named defendant. The writ is signed. Secondly, the affidavit of Ms Surgeon complies with the provisions of both the Practice Direction and Order 41. In her affidavit she clearly states the basis of her information and belief.

[24] I therefore grant leave to amend the title of the plaintiff from Santander (UK) plc to Santander UK plc without brackets. I make no order as to costs as I consider the plaintiff is responsible for the error. I consider that the defendants ought to have acceded to the plaintiff's application and accordingly I do not condemn the plaintiff in respect of the defendants' costs.

Second preliminary issue

[25] At the outset of the hearing the first named defendant applied to have the proceedings heard in private. After hearing submissions from the defendant and Mr Gibson I gave an ex tempore ruling setting out the reasons why I refused this application. Thereafter the hearing proceeded in public.

[26] On the second day of hearing the first named defendant renewed his application to have the proceedings heard in private, on the basis that he had new material to provide to the court to support the application.

[27] After hearing his submissions and looking at the material provided I refused the application. I was satisfied the documents produced were not new material as they were in existence for some time and therefore the defendant could have produced them on the first day of hearing. Secondly, having read and considered the documents which consisted of a "Deed of Trust 'Blu4 private Trust'", "Memorandum of Trust" and "equitable asset", I am satisfied that they consist of legal nonsense and do not provide any basis upon which the court should hear the present proceedings in chambers.

Evidence

[28] I heard evidence from Linda McFadden, solicitor, Mr McVitty, surveyor/mapping expert, Mr Ranger, Group Treasurer with the plaintiff company and Ms Serin, Project Analyst with the plaintiff. The first named defendant declined to give evidence.

Ms McFadden

[29] Ms McFadden is a partner in McFadden Perry, solicitors and has been a solicitor for 35 years. Her firm was retained by the defendants in respect of a re-mortgage of the property. Ms McFadden did not have personal carriage of the case. It was conducted by a trainee solicitor, Ms Graham, who was supervised by Ms McFadden. Ms McFadden confirmed that the ledger card for Mr Eamonn and Mrs Eileen Scullion in respect of a re-mortgage of 61B Ballymacombe Road showed that £266,250 was paid to McFadden Perry by Abbey National plc on 6 November 2008. On 7 November 2008, £264,856.58 was paid to Barclays for Northern Rock. Ms McFadden confirmed that these monies were paid to Barclays to discharge the previous mortgage with Northern Rock. On 7 November 2008, after deductions of costs and disbursements, a surplus of £1,368.42 was paid to the defendants.

[30] Ms McFadden confirmed that Mr and Mrs Scullion had signed the mortgage deed on 7 November 2008, which was a standard Abbey National mortgage deed form. Their signatures were respectively witnessed by Patrick Gaffin, building contractor, and Elaine Kelly, receptionist. In relation to the description given of the property in the mortgage deed she stated that as the property was not registered land it was described in the mortgage deed by reference to its postal address, being, 61B Ballymacombe Road, Londonderry BT44 8NT.

[31] When asked if he wanted to cross examine this witness, the first defendant stated that he had no questions for Ms McFadden "at this time". I explained to the defendant that this was the "main event" and therefore it was essential that he put any questions or points to the witness at this stage as his failure to do so may mean that he could not raise these points on appeal. The first defendant confirmed that he did not have any questions to ask this witness.

Mr McVitty

[32] Mr McVitty, chartered surveyor and expert mapper, prepared a report dated 27 November 2019 which he adopted as his evidence. He confirmed that he was instructed by A & L Goodbody, solicitors to carry out the searches deemed necessary to ascertain whether the mortgaged property was one and the same as the lands owned by the defendants, i.e. the lands conveyed by the Indenture of Sale entered into between James and Elizabeth O'Kane and Eamonn Scullion and Eileen Scullion, which were described in the second schedule thereto and more particularly delineated and edged red in the map attached to the said Indenture of Sale ("the Indenture").

[33] Mr McVitty confirmed he visited the locus; attended the Ordnance Survey Office where he consulted various ordnance survey historical maps; and considered the Indenture and the map attached to the Indenture.

[34] After carrying out various mapping exercises it was his conclusion that the property described in the Indenture and edged red in the map attached to the Indenture was one and the same property as that charged by the defendants in favour of the plaintiff.

[35] Mr McVitty noted that the second schedule of the Indenture described the property as follows:

> "All that part of the lands at Ballymacombs Beg situate in the barony of Loughinsholin and County of Londonderry comprising 2,760 square metres or thereabouts as more particularly delineated on the map thereof attached hereto and thereon edged red."

Further the map attached to the Indenture indicated a rectangular piece of land with measurements of 92 metres in length and 30 metres in width on both sides.

[36] Mr McVitty accepted that the map attached to the Indenture was unsatisfactory in many respects. In particular it was hand drawn; did not refer to the postal address of the property or the townland; and the map had no scale and no North point.

[37] When Mr McVitty compared the map attached to the Indenture to the Ordnance Survey historical maps he found that the Indenture map echoed the Ordnance Survey, Northern Ireland Edition 1 Map of the 1974 Survey. He noted that much of the hand drawn detail on the Indenture map could be identified in the 1974 survey map.

[38] He further established from the Land and Property Services website that the property situate at 61B Ballymacombs Road, Portglenone, Ballymena, County Londonderry BT44 8NT sits in the townland of Ballymacombs-Beg, which is in the barony of Loughinsholin, County Londonderry and the postal address for this property is 61B Ballymacombs Road, Portglenone, Ballymena, County Londonderry BT44 8NT.

[39] Mr McVitty then prepared a "location map" of the area within the mapped boundaries on the ordnance survey maps. He calculated the enclosed area as being 2,795 metres square. It was his view that the variation between the Indenture map and his location map was "*de minimis*" and this variation could be attributable to either the lack of skill or care on the part of the mapper who prepared the Indenture map. In his professional opinion the charged property was one and the same as the property located at 61B Ballymacombs Road, Portglenone, Ballymena, Co Londonderry BT44 8NT and shown edged red in the Indenture map.

[40] Under cross-examination he accepted that ordnance survey maps only showed physical boundaries on the ground as opposed to lawful boundaries and he further stated that the presence of the large Castlewellan Gold hedges could be responsible for affecting the accuracy of the boundary measurements.

Mr Ranger

[41] Mr Ranger is the UK Group Treasurer with the plaintiff company. He adopted his witness statement dated 25 November 2019 and confirmed that the equitable title to the defendants' mortgage had been assigned by the plaintiff to Abbey Covered Bonds LLP on 6 April 2010 and then reassigned to the plaintiff by Abbey Covered Bonds LLP on 28 February 2011. He confirmed that the equitable title to the mortgage loan currently rests with the plaintiff and has not been assigned to any securitisation or similar structure since 28 February 2011. He further confirmed that the legal title to the defendants' mortgage loan remained with the plaintiff at all times.

[42] In cross-examination Mr Scullion put to Mr Ranger that he had tendered payment to the plaintiff. Mr Ranger stated he was not in a position to verify this as he did not deal with credit payments.

Ms Serin

[43] Ms Serin is employed by the plaintiff as a project analyst having formerly worked in the plaintiff's Collections and Recoveries Department. She adopted her statement dated 25 November2019 as her evidence and confirmed that Abbey, the plaintiff's predecessor in title, had made a mortgage offer to Mr and Mrs Scullion on 21 October 2008 whereby the plaintiff agreed to grant a mortgage of £263,500 together with a figure in respect of fees, on an interest only basis for a period of 17 years. She advised that thereafter McFadden Perry solicitors were retained. The mortgage deed was then signed by the defendants and the mortgage loan was drawn down and £266,250 was paid on 6 November 2008 into the account of McFadden Perry.

[44] Ms Serin then referred the court to a mortgage account which had been opened in the defendants' names which demonstrated that on 7 November 2008 a loan advance was made to the defendants and thereafter they made repayments each month until in or around 10 December 2010. At that date the rate of interest changed resulting in the mortgage repayments almost doubling. As a consequence there was default by the defendants in repaying instalments when due and nothing further was paid into the account save a cash payment of £250 on 21 March 2011.

Ms Serin confirmed that this was the last payment made to the mortgage account. Since that date no payments had been made by the defendants to the plaintiff.

Evidence of the defendants

[45] The second named defendant did not appear and was not represented. The first named defendant appeared as a litigant in person. He declined to give evidence. The only evidence therefore before the court from the defendants consisted of affidavit evidence filed on 30 November 2011, 19 November 2011 and 27 February 2012.

[46] In their first affidavit the defendants alleged that the plaintiff had no standing and no right to sue. They further averred that, as the plaintiff had sold the loan and as they had not consented to the sale of the loan, the plaintiff had no title to sue on the loan.

[47] In their second affidavit the defendants sought a number of documentary proofs from the plaintiff in respect of securitisation of the mortgage.

[48] The third affidavit raised similar points and took issue with a number of averments made by Mr Sinclair, solicitor in an affidavit he had filed on behalf of the plaintiff.

Submissions of the parties

[49] Although the first named defendant did not give evidence he submitted to the court that he had tendered payment by way of an equitable asset. He further submitted that the plaintiff was not the correct plaintiff as Santander with brackets around UK was not a party to any mortgage which he and his wife had entered into. He further submitted that he had not received any money from the plaintiff and that in fact he had paid money to the plaintiff.

[50] Mr Gibson submitted that this was a case where the defendants had entered into a mortgage agreement. They had received the mortgage loan and were in default of the terms of the agreement by failing to make repayments as agreed. In accordance with the mortgage agreement and under the Conveyancing Act he submitted that the plaintiff was entitled to an order for possession.

Consideration

[51] On the basis of the evidence I am satisfied that the defendants received a mortgage offer dated 21 October 2008 whereby Abbey National Plc offered them a loan of £263,500.00 together with a sum in respect of fees and expenses. The mortgage was for 17 years and was an interest only mortgage. I am further satisfied that the defendants then attended with their solicitors, McFadden Perry and signed the mortgage deed on 7 November 2008.

[52] The mortgage deed was a standard form Abbey National mortgage. As appears from the mortgage deed the lender is described as Abbey and the borrowers are described as Eamonn Scullion and Eileen Scullion. The property is described as 61B Ballymacombe Road, County Londonderry BT44 8NT.

[53] The mortgage deed then provided as follows:

> "The mortgage incorporates the standard mortgage conditions (August 2007) a copy of which has been received by the borrower.
>
> The borrower, as beneficial owner, hereby demises the property to the lender TO HOLD it on the lender for … for the residue now unexpired of the term of years to which the property is held less the last three days thereof subject to the borrowers equity of redemption … This mortgage secures further advances."

[54] I am satisfied that the mortgage deed incorporated the standard mortgage conditions. These conditions set out the obligations of the mortgagor and the mortgagee.

[55] The most material mortgage conditions are as follows:

> "(a) Condition 7 which provided that the borrowers are obliged to make certain payments to the plaintiff on the dates prescribed.
>
> (b) Condition 24 which provided as follows:
>
> 24.1 For the purposes of our statutory power of sale, the money you owe us is to be treated as due one month after the completion date.
>
> 24.2 We may give you notice requiring you to pay us the money you owe us immediately:
>
> (a) If you are more than two months late in making any payment under the mortgage documents.
>
> …
>
> 24.3 At any time after the money you owe us has become immediately payable under Condition 24.2:
>
> (a) We may exercise the statutory power of sale and all the other powers conferred on mortgagees or security holder by statute … and
>
> (b) We may take possession of the property."
>
> (c) Condition 35 which provided:
>
> "35.1 You agree that we may transfer, or agree to transfer the following to any person at any time:
>
> (a) Some or all of the rights or obligations under the mortgage documents, and
>
> (b) Some or all of the rights or obligations we have under our charge over the additional security.

> 35.2 If we transfer any of our rights under Condition 35.1 the transferee will be able to enforce the transferred rights against you in the same way that we could enforce them before the transfer."

[56] Section 2 of the mortgage deed, entitled "Execution" provided as follows:

> "Signed as a deed by the borrower (signature and print name)."

Immediately following this there appears the signature of Eamonn Scullion and his name is printed below. Below this the mortgage deed states,

> "in the presence of the witness (signature and print name)"

Thereafter there is a signature and the printed name of Patrick Gaffin who is described as a building contractor of a given address. Following this a similar format is followed in respect of Eileen Scullion and her signature is witnessed by Elaine Kelly receptionist of a stated address.

Were the formalities of a Deed complied with?

[57] Article 3 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 ("the 2005 Order") sets out the formalities for deeds executed by individuals as follows:

> **"3.**—(1) An instrument executed by an individual after the coming into operation of this Article is a deed, notwithstanding that it has not been sealed, if, and only if, it satisfies the requirements of paragraph (2).
>
> (2) The requirements referred to in paragraph (1) are that the instrument is—
>
> (a) expressed to be a deed, or to be a conveyance, assurance, mortgage, settlement … required by law to be a deed;
>
> (b) signed -
>
> (i) by the individual executing it in the presence of a witness who attests the signature; or …"
>
> (c) delivered as a deed by the individual executing it or by a person authorised to do so on his behalf."

Consequently a mortgage deed must be signed by the individual executing it in the presence of a witness who attests the signature.

[58] I am satisfied on the basis of the evidence of Ms McFadden that the mortgage deed was signed by each of the defendants and their respective signatures were witnessed.

[59] Deeny J in *Santander v S1 and Another* [2012] NICH 16 raised an issue about whether the signatures were attested. In *Freshfield v Reid* 11 LJ Ex 193 the court held that;-

> "the term 'attest' manifestly implies that a witness shall be present, to testify that the party who was to execute the deed has done the act required by the power; the object of which was that some person should verify that the deed was signed voluntarily."

Further support for this interpretation of the term 'attest' is found in Shrouds Judicial Dictionary of Words and Phrases 7th Edition Volume 1 and paragraph 18.137 of Wylie and Woods, Conveyancing Law 3rd Edition. I am therefore satisfied that the omission of the word attest is not fatal and that the use of the words "in the presence of" with the name, address and occupation of each of the witnesses is sufficient for attestation. I am therefore satisfied that the mortgage deed was duly attested.

[60] Secondly, Deeny J noted that the mortgage deed did not state it was "delivered as a deed". As appears from paragraph 18.127 Wylie's Irish Conveyancing Law and *Evans v Gray* [1882] 9 LRIR 539 delivery as a deed is something that can be inferred from very little. In this case the plaintiff's solicitor exhibited the mortgage deed or at least a copy thereof to the original affidavit. I am therefore satisfied that the mortgage deed was delivered to the defendants. I am therefore satisfied that the requirements of Article 3(2)(c) have been satisfied

[59] Thirdly, Deeny J raised some concerns about whether the defendants' land had been demised to the plaintiff in the mortgage deed due to discrepancies in the description of the land in the mortgage deed compared to the description of the property in the Indenture and the unsatisfactory map attached to the Indenture. He queried whether an essential proof was before the court i.e. that the borrowers conveyed a particular piece of land which they owned to the mortgagee. He opined that this could be remedied by the plaintiff calling a surveyor or perhaps putting in an affidavit.

[60] Although the mortgage deed failed to set out details of the townland and referred to the address as Ballymacombe Road rather than Ballymacombs Road, it did nonetheless correctly set out the postal address and number of the property. I also accept that the map attached to the Indenture is very unsatisfactory in many respects. Nonetheless I accept the evidence of Mr McVitty that the map contains sufficient information to link it to the ordnance survey maps for Ballymacombs–Beg townland and that the area enclosed by the Indenture map is very similar to the area enclosed by boundaries on the ground visible in the ordnance survey maps. Accordingly, having heard the evidence of Mr McVitty I am satisfied that the property described in the Indenture and the map attached thereto is one and the same property as that described in the mortgage deed. Accordingly I am satisfied that the defendants did convey the property to the plaintiff under the mortgage deed.

Conclusions

[61] I am satisfied that the defendants each entered into the standard mortgage deed and this is a valid deed. I am further satisfied that the plaintiff provided the loan which was secured by way of a mortgage over the defendants' property, and the mortgage was subject to the lender's standard terms and conditions, which included an obligation to repay the loan by way of instalment payments and provided that in the event of default, the mortgagee had the right to repossess the property. I find that the defendants defaulted in paying the instalments when due and owing as appears from the evidence of Ms Serin and the defendants' bank account statements. I further find that the defendants have not, as the first defendant alleged, tendered payment. The 'equitable asset' document handed into court, which the first defendant relied on as evidence of repayment of the debt, consists of legal mumbo jumbo. I am therefore satisfied on the basis of the evidence of Ms Serin that no payments have been made by the defendants since 21 March 2011. Accordingly they are in default of the mortgage conditions.

[62] On 14 June 2011 the plaintiff wrote to each defendant formally advising them that the tenancy created by the mortgage would determine upon the expiration of seven days from the service of that notice upon them and that the plaintiff was entitled to take possession of the property.

[63] In all these circumstances, in accordance with the mortgage conditions and the Conveyancing Act, I find that the plaintiff is entitled to an order for possession.

[64] Secondly, I am satisfied that the application to amend the title of the plaintiff has retrospective effect and accordingly the proceedings have been brought in the name of the correct plaintiff which is Santander UK plc, without brackets.

[65] Thirdly, I find that, although the mortgage loan was assigned, the assignment was equitable. If I am wrong about that I am satisfied that the mortgage was re-assigned to the plaintiff and therefore the plaintiff is currently the legal and beneficial owner of the mortgage and has title to bring the present proceedings.

[66] In addition as this is a re-mortgage case the plaintiff could have relied on its rights by way of subrogation. The plaintiff however did not seek to rely on this principle and accordingly I do not rule on this point.

[67] This is a typical repossession case. The defendants borrowed money from the plaintiff which was secured on their property. They failed to keep up the payments in accordance with their agreement. They have now been in possession of the property for a number of years without making any repayments. None of this evidence was challenged by the defendants and all of the arguments raised by the first defendant were completely devoid of merit. I am therefore satisfied that the plaintiff is entitled to the order for possession sought and accordingly I make an order for possession of the property.

[68] I will hear the parties in respect of costs.