

Is this the end of receiver style injunctions for vacant possession of property?

Analysis of *Charleton v Hassett*, [2021] IEHC 746 (the "**Proceedings**") and the judgment of Mr. Justice Allen dated 30 November 2021 (the "**Judgment**")

"I will quite frankly say is my disquiet as to the circumstances in which the dispute as to the entitlement to possession of this house arose and was thereafter escalated" - Mr. Justice Allen

Practice Focus

- High Court receiver injunction application for vacant possession of property.

Overview

- The Plaintiff ('Luke Charleton') sought injunctive relief for vacant possession of the property known as Old Cratloe Road, Meelick, Clonconnane, County Limerick (the "**Property**").
- By deed of mortgage dated 12th December 2005, the Defendant executed a charge in favour of Allied Irish Bank plc ("**AIB**") on an all sums due payment (the "**Mortgage**").
- By facility letter dated 24th October 2008, the Defendant refinanced with a facility for €659,542.00 (the "**Facility**").
- AIB obtained summary judgment for €801,324.97 against the Defendant on 25th July 2016.
- By deed of appointment of receiver dated 6th July 2018, AIB appointed Luke Charleton and Damien Murran as joint receivers over the Property.
- By deed of transfer dated 14th June 2019, the Mortgage and Facility were transferred to Everyday Finance DAC ("**Everyday**").
- Damien Murran (joint receiver) was discharged on 19th February 2020.

- Over the course of fourteen months the locks of the Property were changed by the Plaintiff and the Defendant.
- It was evidenced by the Plaintiff a beehive was placed before the front door.
- The Defendant called on the Plaintiff to deliver a statement of claim but none was delivered.
- The Plaintiff's solicitors requested the standard undertaking from the Defendant not to interfere with the Property.
- The Defendant in reply, stated he would provide the undertaking if the validity of the receivership was proved via inspection of original facility letter, deed of mortgage, and deed of appointment of receiver.

The Court's initial observation

- *"The case throws up a number of issues of general importance as to the correct approach to be taken by the court to what are loosely referred to as receiver injunctions... The issue of general importance thrown up by this application is the manner in which a mortgagee – whether by itself or by proxy – is entitled to take possession of the mortgaged property."* - Mr. Justice Allen.

The Defendant objected to the application on the following grounds:-

- The Plaintiff had not established the validity of the appointment of receiver;
- The Plaintiff had refused to provide inspection of the original deed of appointment, facility letter, deed of mortgage under s. 91 of the Land and Conveyancing Law Reform Act 2009 (the "**2009 Act**");
- A substantial offer was made by the Defendant to AIB in 2016;
- The Plaintiff had breached the EU Directive 85/557/EEC ("**Business Premises Directive**"), a directive to protect consumers from contract negotiated away from business premises;
- The Plaintiff had breached the Unfair Terms in Consumer Contracts Regulation 1995 ("**Unfair Terms Regulation**")
- The Property was the Defendant's family home.

The Court's findings:-

In examining the Defendant's objections, Justice Allen concluded:-

- The Court was extremely critical of the Plaintiff's use of an injunction to sell the Property.
- The Property was not the family home but the Property was the Defendant's principal private residence.
- There was no breach of the Business Premises Directive or Unfair Terms Regulation by the Plaintiff.
- The Defendant's offer of a previous settlement with AIB is irrelevant to the current proceedings.
- The Court could see no justification for the Defendant's right for inspection of documents under s.91 of the 2009 Act to be rejected by the Plaintiff.
- The discharge of one of the joint receivers, Damien Murran undermines the appointment of Luke Charleton (the other joint receiver) as "[the deed of appointment of joint receiver] *exhibited is not obviously effective to allow and oblige Mr. Charleton to act on his own*"
- The Court stated that a one week demand for possession does not amount to an unlawful attempt to frustrate a receiver or mortgagee's agent.
- The Plaintiff's argument that the Defendant had interfered and obstructed the receiver from carrying out his duties as receiver and mortgagee's agent was rejected by the court stating "*I find it difficult to see how it could have been lawful for the plaintiff to have changed the locks without the defendant's consent at a time the defendant was unquestionable in lawful possession of the property.*"
- Significantly the court took the view that the Defendant had not refused to provide an undertaking not to interfere with the Property. Rather the Defendant would cooperate with the Plaintiff on sight of the validity of the receiver's appointment.
- The Plaintiff had not provided sufficient evidence to the Court of the novation of receivership from AIB to Everyday and the Court stated the Plaintiff has no interest in the security- "*it could only have been Everyday's possession that could have been interfered with.*"

Key Takeaways

1. Even with evidence of borrower frustration of the receiver, the Courts are becoming increasingly reluctant to grant receiver-style injunctions for vacant possession; stating the use of an injunction to sell a property is improper.
2. The Court takes a dim view of the changing of locks of owner occupied properties in the absence of consent.
3. Even with borrower frustration present, in changing locks of owner occupied property, receivers should be aware of the exposure to a trespass claim from the owner occupier.
4. An uncompiled one week demand letter for vacant possession of a property is not sufficient evidence of the borrower's frustration of the receiver.
5. Permitting inspection of documents by borrowers in accordance with s.91 of the 2009 Act should be complied with.
6. Full title of the receiver should be exhibited as part of an application for injunctive relief.
7. Delivery of a statement of claim should be strongly considered as part of the proceedings.
8. The use of alternative court routes to obtain vacant possession, such as a High Court Order for Possession should be considered.

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