

**APPROVED**



**NO REDACTION NEEDED**

**THE COURT OF APPEAL**

**[2021] IECA 176**  
**Record Number: 2018/298**  
**High Court Record Number: 2016/502SP**

**Noonan J.**

**Power J.**

**Collins J.**

**BETWEEN/**

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

**PLAINTIFF/RESPONDENT**

**-AND-**

**JANET MATTHEWS**

**DEFENDANT/APPELLANT**

**RULING of the Court delivered on the 17th day of June, 2021**

1. The court delivered its judgments in this appeal on the 31<sup>st</sup> July, 2020 and the facts are fully set out in those judgments. In brief summary, these proceedings were brought by the respondent bank for possession of a dwelling house in Laytown, County Meath which was the subject of a mortgage entered into by Mr. John Melsop in 2005. Mr. Melsop died on the 14<sup>th</sup> February, 2013. The appellant was his partner and resided at the property with him. Mr. Melsop made some defaults in meeting the monthly repayments due on foot of the loan so that substantial arrears had accrued by the date of his death. Thereafter, Ms. Matthews

continued to reside in the property and made some further mortgage payments, the last being on the 28<sup>th</sup> January, 2014.

2. Ms. Matthews resisted the bank's claim for possession on two grounds. The first was that the proceedings ought to have been commenced in the Circuit Court on the basis that she was the "mortgagor" of the property within the meaning of s. 3 of the Land and Conveyancing Law Reform Act, 2013 which requires that proceedings seeking possession against a mortgagor must be brought in the Circuit Court. This argument failed. The second was that the claim is statute barred and again, for the reasons set out in the judgments, that contention was rejected by the court. The appeal was accordingly dismissed.

3. The original order for possession was made by the High Court on the 15<sup>th</sup> June, 2018 with a stay pending appeal. As that stay lapsed following the dismissal of the appeal, the court gave liberty to the appellant to seek a stay on the order for possession and to deliver a written submission in that regard within 14 days of the judgment. The court directed that the submissions should also deal with the question of costs and in default of receipt of submissions, the costs would be awarded to the successful respondent.

4. It would appear that written submissions were delivered by both parties within the time directed by the court but due to administrative oversight, those submissions were only recently made available to the court. Having regard to the passage of time, the court sought up to date information from the parties on whether the appellant is still residing in the property, whether any further mortgage payments have been made and any other relevant information. The parties have now provided that information to the court.

5. In its initial submissions furnished on the 7<sup>th</sup> August, 2020, the bank noted that it had agreed a voluntary stay on the order for possession until the conclusion of the appeal. Having regard to the pandemic, it was at that time agreeable to a further stay to the end of 2020. The

bank further sought the costs of the appeal on the basis that it had been entirely successful and they should follow the event, there being no special circumstances to justify a departure from the normal rules. In her submissions, Ms. Matthews sought a stay of 12 months and further, that the court should make no order as to costs on the appeal. The court should make such order, it was said, on the basis that it had disagreed with the High Court regarding the definition of “mortgagor” in the 2013 Act and thus it could be said that the bank had not been entirely successful.

6. It is not uncommon for an appeal court to reach the same conclusion as the High Court based on slightly different reasoning but that does not, in general, give rise to any necessity to depart from the normal rule unless discrete issues can be identified, the agitation of which has distinct cost implications. Nothing of that sort arises here. It is also submitted on behalf of Ms. Matthews that the decision provides clarification and guidance for future cases. Having said that, Ms. Matthews concedes that this is not a test case nor is any public interest engaged, but solely the appellant’s private interests. In many cases, the court is called upon to decide issues that may have been previously decided, but novelty alone is not of itself a reason to depart from the normal rule.

7. In her more recent submissions, Ms. Matthews has suggested in the alternative that the court might consider limiting the bank’s costs to 50% of the costs of the appeal. This court has carefully considered these arguments but does not find in them any basis which would justify this court in exercising its discretion to depart from the normal rule.

8. The recent information furnished to the court indicates that no further payments have been made on foot of the mortgage or otherwise by Ms. Matthews to the bank. Accordingly, Ms. Matthews has remained in occupation and possession of the premises the subject matter of these proceedings now for well over seven years without making any payment to the bank.

It was originally contended at the appeal that Ms. Matthews did not make such payment lest it prejudice her argument under the Statute of Limitations. In a departure from her original submissions on costs and a stay post the judgments herein, Ms. Matthews now says that she wishes to appeal to the Supreme Court and again asserts that for her to make any payments, whether without prejudice or otherwise, would potentially affect her position with regard to the Statute of Limitations.

9. In contrast with her original submissions, she now seeks a stay on the order for possession pending the determination of an application for leave to appeal to the Supreme Court and in the event that that application is successful, the determination of the appeal by the Supreme Court. Alternatively, if the application for leave is unsuccessful, she seeks a stay for a further period of three months subsequent to the determination by the Supreme Court of her leave application.

10. In the court's view, having regard to all the factors outlined above, it would not be appropriate for this court to stay the order for possession further beyond a relatively short period. It is of course open to Ms. Matthews in that regard to make further application for a stay to the Supreme Court, should she wish to do so.

11. Accordingly, the court awards the bank its costs of the appeal. There will be a stay on the order for possession until the 1<sup>st</sup> September, 2021.

17th June, 2021  
Seamus Hannon  
Jus. Powell.  
