

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND)
DESIGNATED ACTIVITY COMPANY

PLAINTIFF

– AND –

MICHAEL (OTHERWISE GERARD OR GERRY) EGAN AND EILEEN EGAN

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered 14th day of November, 2019.

- On 7.11.05, Mr and Mrs Egan entered into a home loan agreement with GE Capital Woodchester Home Loans Limited. The grounding affidavit in the within proceedings contains an erroneous averment that the lender was GE Capital Woodchester Finance Limited. However, there is no doubt from the documentation that the lender was GE Capital Woodchester Home Loans Limited. The loan cheque issued from GE Capital Woodchester Limited. Nothing turns on this. The foregoing details are summarised in *Table 1* below.

Reality	Error?
Home Loan issued by GE Capital Woodchester Home Loans Limited by Mr and Ms Egan on 7.11.05	Grounding affidavit erroneously swears to home loan as having issued from GE Capital Woodchester Finance Limited. The documentation clearly shows that the home loan issued from GE Capital Woodchester Home Loans Limited.
Loan Cheque of 14.12.05 issues from GE Capital Woodchester Limited	No error presents. No issue presents by virtue of the cheque issuing from another
Indenture of Mortgage of 07.04.05 executed between Mr and Ms Egan and GE Capital Woodchester Home Loans Limited	No error presents.

Table 1.

- GE Capital Woodchester Home Loans Limited has undergone a couple of relevant name/status-changes since the home loan issued. These are summarised in *Table 2* below. These changes have the end-result that the within proceedings have correctly been brought in the name of Pepper Finance Corporation (Ireland) Designated Activity Company.

GE Capital Woodchester Home Loans Limited	
11.10.2012.	Changes name to Pepper Finance Corporation (Ireland) Limited.
Pepper Finance Corporation (Ireland) Limited	
29.10.2015.	Converts from Pepper Finance Corporation (Ireland) Limited to Pepper Finance Corporation (Ireland) Designated Activity Company.

Table 2.

3. The court recalls in this regard that s.63(12) of the Companies Act 2014 provides that re-registration of an existing private company (which Pepper Finance Corporation (Ireland) Limited clearly was) *"shall [inter alia] not affect any rights or obligations of the company or render defective any legal proceedings by or against the company..."*
4. The Indenture of Mortgage when filed with the Land Registry was given Dealing Number D2008WR009298C. Table 3 below shows the entries made in the relevant folio (Folio 23888F) with respect to this Dealing Number.

Folio 25388F	
<i>Dealing Number</i> <i>D2008WR009298C</i>	<i>Court Comment</i>
21.02.2008. Folio details amended to show charge in favour of GE Capital Woodchester Limited	This involved a clerical error. The correct name of the mortgagee was GE Capital Woodchester Home Loans Limited.
27.02.2015. Folio details amended to reflect that name of mortgagee was GE Capital Woodchester Home Loans Limited.	Accompanying note states that this change was effected pursuant to Rule 7(1) of the Land Registry Rules. That rule provides that "[w]here a clerical error is discovered in a register...the Authority may, after giving any notices and obtaining any evidence or assent that it may deem proper, make the necessary correction". The Egans indicate that they received no notice of the name-change. The Land Registry is entitled under its own rules to proceed without notice. The court does not see what purpose would have been served by giving notice of the trivial nature of the change made, which is patently a clerical error.

	Even if the court is wrong in this (and it does not consider that it is), the Egans have suffered no prejudice by virtue of the change.
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Table 3.

5. It is worth recalling at this point that, pursuant to s.31(1) of the Registration of Title Act 1964, save in circumstances which do not present here, *"The register shall be conclusive evidence of the title of the owner to the land as appearing on the register and of any right, privilege, appurtenance or burden as appearing thereon..."*. The fact that *"conclusive"* means well and truly conclusive, save as statute contemplates, has recently been emphasised by the Court of Appeal in *Tanager D.A.C v. Kane* [2018] IECA 352, paras. 57-58.
6. On 20.11.2018, the Circuit Court made an order for possession in favour of Pepper Finance Corporation DAC. This is an appeal against that order. At hearing the court was taken through the various proofs by counsel for Pepper Finance Corporation DAC. Those proofs are entirely in order and the Circuit Court, which was possessed of the necessary jurisdiction, was perfectly correct in issuing the order that it did.
7. The court notes in passing that para. 10 of the Special Indorsement of Claim of the Civil Bill for Possession originally states as follows:

"These proceedings are commenced in the Circuit Court pursuant to section 3 of the Land and Conveyancing Law Reform Act 2013 as they are proceedings brought by a mortgagee seeking an order for possession of land which is the principal private residence of – (a) the mortgagor of the land concerned, or (b) a person without whose consent a conveyance of that land would be void by reason of – (i) the Family Home Protection Act 1976, or (ii) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, and the mortgage concerned was created prior to 1 December 2009".

That paragraph was duly deleted by order of the Circuit Court of 20.11.2018 and the following sentence inserted: *"The market value of the Mortgaged Property does not exceed €3,000,000."* No error presents in this regard.

8. The Egans have the sympathy of the court that a possession order should issue against them. However, there is no doubt at law but that (i) Pepper Finance Corporation (Ireland) DAC is entitled to that order, and (ii) the Circuit Court had the necessary jurisdiction, and was correct, to issue such order.