

THE HIGH COURT

[2023] IEHC 482

[Record Nos. 2021/163/CA, 2021/214/CA]

BETWEEN

EVERYDAY FINANCE DAC T/A LINK FINANCIAL

PLAINTIFF

AND

GARRY O'BRIEN, MARTINA O'BRIEN

DEFENDANTS

JUDGMENT of Ms Justice Bolger delivered on the 31st day of July 2023

1. This is an appeal from a Circuit Court order for possession of the defendant's family home arising from default on their mortgage repayments which had led to substantial arrears, standing at €101,419.69 as of 29 September 2022 and which will have continued to accrue since then. There are separate proceedings in being arising from Mr O'Brien's engagement with a commercial premises at Ryders Row from where he managed a bicycle repair business for many years. Mr O'Brien claims title over that property by way of his claimed adverse possession against the receivers appointed over the property of his former landlord. Mr O'Brien also has issued related proceedings against Dublin City Council for damages.

2. This appeal was before this Court previously in July 2022 when it was adjourned to allow further affidavits to be filed in relation to Mr O'Brien's other proceedings and again in November 2022 to allow discovery to be furnished. The matter was back before

the court on 14 February 2023 at which time an order was made substituting the plaintiff for Promontoria arising from a deed of transfer of 2 December 2022 for the purchase of the loan the subject of appeal by the plaintiff from Promontoria.

3. By Notice of Motion of 9 March 2023, Mr O'Brien sought to set aside the substitution order on the basis that he never received the plaintiff's "hello" letter. His counsel confirmed to the court that he is not pressing this application, a position I consider to be wise in the light of the legal authorities on the assignment of a debt without notice, the form of notice that has been found by the court to be adequate (set out by Baker J. in *AIB Mortgage Bank v. Thompson* [2017] IEHC 515) and the fact that the plaintiff acknowledged receipt of the "goodbye" letter.

4. I am refusing the defendant's application to set aside the substitution order that I made on 14 February 2023.

Application for an adjournment: Section 101 of the Land and Conveyancing

Law Reform Act 2009

5. Section 101 of the LCLRA 2009 allows this Court to grant an adjournment or a stay "*where it appears to the court that the mortgagor is likely to be able within a reasonable period to pay any arrears, including interest, due under the mortgage or to remedy any other breach of obligation arising under it*".

6. There are various documents before the court pertaining to Mr O'Brien's other proceedings. It is significant that Mr Gavin Ralston SC has provided an Opinion in which he says Mr O'Brien "*is in a good position to claim title by adverse possession*" and has a "*strong claim*" to bar the title of the person to whom his former landlord

transferred the property in 1998. Subject to proof of title, Mr Ralston SC says that Mr O'Brien will then be entitled to claim compensation.

7. Therefore, as things currently stand, if Mr O'Brien succeeds in his other proceedings, he will be secure compensation. He says the value of the commercial premises is approximately €400,000 which is clearly sufficient to discharge the current arrears on the mortgage. He also furnished a valuation of the family home of €450,000. The plaintiff claims those values do not account for a possible fall in property value, but they have not produced any evidence offering different valuations.

8. I am satisfied that the value of the property the subject matter of Mr O'Brien's other proceedings is sufficient to deal with the arrears that have built up on the family home as well as the arrears that may continue to accrue over the coming twelve months. The value of the family home would appear to be such that the plaintiff's debt will not be prejudiced even if Mr O'Brien is unsuccessful in his other proceedings, and it becomes necessary for the plaintiff to pursue its claim for possession and sell the family home in order to realise its debt.

9. Mr Quirke SC for the defendant seeks an adjournment of one year which Mr Goode says is not reasonable and, in any event, he says there is still considerable uncertainty as to what the status of the other proceedings will be in a year's time. Mr Goode BL for the plaintiff contends that the requirements of s. 101, that the defendant is likely to be able to pay the arrears "*within a reasonable period*" has not been met and that the justice of the situation can be fairly met by a lengthy stay of six months on the possession order that he asks the court to make.

10. The defendant's other proceedings were not progressed particularly expeditiously when initially issued but matters have moved on considerably since the

within proceedings where instituted, which is unsurprising given the significant motivation that Mr O'Brien now has to secure monies in order to retain possession of the family home and avoid rendering him, his wife and his adult child and their four infant children homeless.

11. In my view, what is meant by a "*reasonable period*" in s. 101 not only means the length of time for which the matter may be adjourned, but also imports the extent to which the plaintiff's debt is protected or potentially prejudiced by such an adjournment. On the facts of this case, it is clear that the plaintiff's interest continues to be protected by the value of the family home, which exceeds that debt, even without Mr O'Brien's other proceedings.

12. This application for an adjournment is not a device for delaying a possession order to which there is no reasonable or viable alternative. Mr O'Brien's other proceedings present a very real prospect of success, an outcome supported by the Opinion of Senior Counsel. If Mr O'Brien succeeds, all parties' interests can be protected, i.e. the plaintiff's interest in securing the repayment of the substantial arrears that Mr O'Brien has allowed to accrue and Mr O'Brien's interest in retaining possession of the family home. Mr Goode is correct that Mr O'Brien's other proceedings involve some uncertainties. However there are some certainties in the overall situation including the protection of the plaintiff's interests by the option of the future sale of the family home should that be necessary as well as the certainty that an order for possession sought by the plaintiff will put Mr O'Brien and his family at a real risk of homelessness in a city where there is a well acknowledged serious shortage of accommodation, a matter of which I consider I can take judicial note.

13. I am, therefore, satisfied that the interests of both parties and the interest of justice are adequately and best served by granting an adjournment of one year. I will reserve the costs of this and the previous applications.

Counsel for the plaintiff: Hugh Good BL.

Counsel for the defendant: Barney Quirke SC, Kate Conneely BL