THE COURT OF APPEAL

UNAPPROVED
NO REDACTION NEEDED

Neutral Citation Number [2021] IECA 46
Court of Appeal Record No. 2019/487
High Court Record No. 2012/331 SP

Whelan J.
Noonan J.
Haughton J.

BETWEEN:

EVERYDAY FINANCE DAC

RESPONDENT

-AND-

JERRY BEADES

APPELLANT

Judgment of Ms. Justice Máire Whelan delivered on the 18th day of February 2021

Introduction

1. This is an appeal from the order of the High Court (Reynolds J.) of 29 October 2019 refusing the appellant's application under O. 40, r. 1, seeking production of a deponent, Andrew McCudden, for the purposes of his cross-examination in respect of two affidavits sworn by him. Reliefs sought by Everyday Finance DAC (hereinafter "Everyday Finance") by a separate motion pursuant to O. 17, r. 4; O. 42, r. 24(a); and, O. 28, r. 12 were granted.

2. This appeal was heard together with, *inter alia,* separate appeals bearing record numbers 2019/254 and 2019/276 from orders of the High Court made on 24 May 2019 and 6 June 2019, respectively, together with a motion seeking a stay on the orders made on 24 May 2019. All

three appeals arise in respect of orders made within the same High Court proceedings bearing record number 2012/331 SP.

3. The title page of this judgment reflects the most up-to-date details of the parties in the underlying High Court proceedings as recorded by the Central Office of the High Court. This should not be taken as a pre-judgment of the issues discussed herein or of any other appeals brought by the appellant. For the purposes of the substance of this judgment, "the respondent" refers to Everyday Finance.

Background

4. The within proceedings were commenced by special summons on 12 June 2012 by Permanent TSB as mortgagee seeking possession of three properties in Fairview, Dublin held as security ("the secured properties").

5. Following a judgment of McGovern J. delivered on 25 February 2014, [2014] IEHC 81, on 6 March 2014 Permanent TSB was granted an order for possession ("the Possession Order") of the secured properties. The Possession Order was made on foot of a deed of mortgage dated 23 December 2002 granted over the secured properties and created by the appellant in favour of the bank by way of security for his liabilities to it, including *inter alia* those arising on foot of a loan facility letter dated 4 October 2002.

6. By notice of appeal dated 23 April 2014, the appellant initiated an appeal against the Possession Order.

Devolution of mortgagee's title to Cheldon

7. By deed of conveyance and assignment dated 14 October 2015, Permanent TSB transferred, conveyed and assigned to Cheldon Property Finance Ltd. (hereinafter "Cheldon") all of the rights, title, interest and benefits of Permanent TSB pursuant to the mortgage of December 2002. The appellant was duly notified of the transfer of the relevant loan facilities to Cheldon in October 2015.

8. By order of the Court of Appeal dated 17 October 2016, Cheldon was joined as a co-plaintiff to the proceedings and as co-respondent to the appeal and the special summons was amended on 9 November 2016 pursuant to the order.

9. The appeal against the making of the Possession Order was dismissed by the Court of Appeal on 13 November 2017. In a determination of the Supreme Court on 22 November 2018, the appellant was refused leave to appeal the said order.

Other orders made within these proceedings

10. On 24 May 2019 the High Court (O'Connor J.), following delivery of an *ex tempore* judgment, granted the application of Cheldon and made orders that Cheldon be named as the sole plaintiff in the proceedings pursuant to O. 17, r. 4; liberty was granted to issue execution on foot of the Possession Order pursuant to O. 42, r. 24(a); and, the Possession Order was amended pursuant to O. 28, r. 12 to substitute Cheldon for Permanent TSB as the plaintiff in the title thereof. That order is the subject of a separate appeal bearing record number 2019/254.

Everyday Finance's notice of motion of 18 October 2019

11. By way of notice of motion of 18 October 2019, at a time when the appellant's appeals against the above referred to orders of O'Connor J. were pending before this court, Everyday Finance applied to the High Court for, *inter alia*, the following reliefs:

1) an order pursuant to O. 17, r. 4 and/or pursuant to the inherent jurisdiction of the High Court naming Everyday Finance as sole plaintiff in the proceedings;

2) an order pursuant to O. 42, r. 24(a) and/or the inherent jurisdiction of the High Court granting Everyday Finance liberty to issue execution on foot of the Possession Order; and,

3) an order pursuant to O. 28, r. 12 and/or the inherent jurisdiction of the High Court amending the Possession Order so as to name Everyday Finance in place of Cheldon as the plaintiff in the title thereof.

The application was grounded on the affidavit of Andrew McCudden, Legal Manager of Everyday Finance, sworn on 16 October 2019. In that affidavit Mr. McCudden deposed as to the procedural history of the litigation and the devolution of the mortgagee's title, including the sale of the loans from Cheldon to Everyday Finance by way of mortgage sale and purchase deed dated 18 April 2019 and deed of assignment dated 19 July 2019 which were exhibited. Mr. McCudden deposed to and exhibited letters sent by Cheldon to the appellant on 22 July 2019 and by Everyday Finance to the appellant dated 26 July 2019, notifying the appellant of the assignment of the loan facility, facility letter and mortgage to Everyday Finance.

12. A corrective affidavit was sworn by Mr. McCudden on 23 October 2019 to correct an averment at para. 62 of his first affidavit concerning the beneficial ownership of the loan facility, facility letter and mortgage, clarifying that the beneficial interest in the loan and mortgage is owned by LC Asset 1 S.à R.l and that Everyday Finance holds the title for the former's benefit.

Appellant's notice of motion of 24 October 2019

13. By way of notice of motion of 24 October 2019, the appellant applied to the High Court for an order pursuant to O. 40, r. 1 for leave to seek the production of Andrew McCudden for the purpose of cross-examination. The said application was grounded on an affidavit of the appellant sworn on 24 October 2019.

14. By order of Reynolds J. of 29 October 2019, the appellant's application pursuant to O. 40, r. 1 was refused and the reliefs sought by Everyday Finance in its notice of motion of 18 October 2019 were granted.

Notice of appeal

15. The notice of appeal, filed on 26 November 2019, contended that the trial judge erred in:

1) acceding to the application for substitution when the Court of Appeal was already seised of an appeal in the case;

2) refusing the appellant's motion to cross-examine Andrew McCudden on whose affidavit the respondent's motion for substitution was grounded;

3) giving no adequate reasons for refusing the appellant's motion to cross-examine;

4) acceding to the motion to substitute the plaintiff "in circumstances where the applicant had only a bare title to the loan and was taking instructions from a principal who is not on title in the proceedings"; and,

5) acceding to the request to substitute the plaintiff "given the unsatisfactory testimony in relation to the means of knowledge of Andrew McCudden."

16. The respondent opposed the appeal.

Submissions of the parties

17. The written submissions of the appellant pertain to the appeal herein and also to two other appeals bearing record numbers 2019/254 and 2019/276. They do not specifically address the issues raised at grounds 1 to 5 inclusive of the notice of appeal, which concern the refusal of the trial judge to make an order pursuant to O. 40, r. 1.

18. If the arguments advanced in the written submissions (relating, *inter alia,* to the entitlement of the court to make an order pursuant to O. 17, r. 4; the "assignability" of an order for possession (O. 42, r. 24(a)) and whether it was permissible to amend the name of the plaintiff on the Possession Order (O. 28, r. 12)) were intended to apply to this appeal, they are each rejected for the reasons outlined in the judgment dealing with appeal no. 2019/254 which is intended to be read herewith.

Stare decisis

19. At the hearing of this appeal, counsel for the appellant submitted that it was offensive to the doctrine of *stare decisis* for the High Court to make the order of 29 October 2019 in circumstances where the Court of Appeal was already seised of an appeal in the proceedings.

He submitted that Everyday Finance's application should instead have been made to the Court of Appeal.

O. 42, r. 24

20. Counsel for Everyday Finance argued that O. 42, r. 24 envisages such application being brought in the High Court. In addition, counsel asserted that, had the application been made to the Court of Appeal, the appellant would have argued that he was being deprived of his right of appeal.

Champerty

21. Counsel for the appellant advanced by way of a new argument at the hearing of this appeal that this case may involve trade in litigation. It was asserted that "obtaining an order with the intention of passing it to another at a later point" amounts to champerty. Counsel for the appellant characterised this as "selling a right to execute" and distinguished this from a situation in which a mortgagee sold in possession.

22. The orders being sought by the appellant if successful are: -

(1) that the order of substitution of Everyday Finance DAC for the plaintiff, Cheldon Property Finance DAC, made on 29 October 2019 by Reynolds J. in the High Court be set aside; and,

(2) an order allowing the appellant's application pursuant to O. 40, r. 1 that Andrew McCudden be produced before the High Court for the purposes of his cross-examination in relation to affidavits sworn by him on 16 October 2019 and 23 October 2019 in support of Everyday Finance's motion to be made the sole plaintiff in the proceedings together with consequential orders.

Discussion

(i) Pending appeals

23. The appellant at Ground 1 contended that the fact that there were other appeals pending before the Court of Appeal in relation to orders made by the High Court in the same proceedings in effect precluded the trial judge from entertaining Everyday Finance's application. However the orders sought for the benefit of Everyday Finance pursuant to O. 17, r. 4; O. 28, r. 12; and, O. 42, r. 24(a) arose from a supervening event being the devolution of title and were wholly separate and distinct from the orders which were under appeal at that date. As of the date the notice of motion issued on behalf of Everyday Finance on 18 October 2019 two appeals were pending before the Court of Appeal in relation, firstly, to an order made by O'Connor J. in the High Court on 24 May 2019 and, secondly, in respect of a further order made by the same judge on 6 June 2019, both in favour of Cheldon. There was also a motion seeking a stay on the orders granted on 24 May 2019 which was disposed of by the court at the conclusion of the appeal hearing.

24. Order 86, r. 7 provides:-

> "Application in first instance to court below
>
> 7. Subject to any provision of statute, whenever under these Rules an application may be made either to the Court of Appeal or to the court below, it shall be made in the first instance to the court below."

25. The appellant did not identify any relevant provision of statute which operated to the contrary in the instant case.

26. In addition, it is of note that no stay was placed on the order of O'Connor J. of 24 May 2019, the subject of appeal no. 2019/254, such as would preclude the proceedings from being progressed in the manner sought by Everyday Finance by its notice of motion of 18 October 2019.

(ii) Motion to cross-examine

27. Grounds 2, 3 and 5 of the notice of appeal, referred to above, are directed to the trial judge's refusal to make an order pursuant to O. 40, r. 1.

28. Order 40, r. 4 provides: -

> "Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted…"

An affidavit conventionally commences with express reference to the means of knowledge of the deponent and the rule requires such a statement. O'Floinn in *Practice and Procedure in the Superior Courts* (2nd ed., Bloomsbury Professional, 2008) commented on r. 4:–

> "…All facts stated thereafter by the deponent may be assumed to be of his own knowledge (*M'Evers v. O'Neill* (1879) 4 L.R. Ir. 517 and *Chermside v. Hunt* (1879) 3 L.R. Ir. 456) although the means of knowledge of each statement should be apparent: *Fry v. James* (1870) 4 I.R. Eq. 255."

The authors of *Delany and McGrath on Civil Procedure* (4th ed., Round Hall, 2018) observe at para. 21-62:-

> "An affidavit that omits a means of knowledge clause is generally inadmissible…"

29. In his affidavit of 16 October 2019 Andrew McCudden deposed as follows: -

> "I am the legal manager of Everyday Finance DAC (the 'Applicant'), having its registered office at 16 Briarhill Business Park, Ballybrit, County Galway. I am duly authorised by the Applicant to make this affidavit for it and on his [*sic*] behalf. I do so from facts within my knowledge and from a perusal of the books and records of the Applicant, save as where otherwise appears, and where so otherwise appearing, I believe said facts to be true and accurate in all material respects."

30. In the subsequent affidavit sworn by Andrew McCudden there is an identical averment at para. 1 thereof. It is particularly noteworthy that both averments specifically give the source of the information and belief of the deponent as being a combination of his own knowledge and from a perusal of the books and records of Everyday Finance DAC.

31. A perusal of the grounding affidavit of the appellant suggests that the "unsatisfactory testimony" complained of relates to the "means of knowledge of Andrew McCudden" and pertains to the averments in paras. 19, 20, 58, 59 and 62 of the first affidavit of Mr. McCudden. Those paragraphs in the first affidavit primarily pertain to the devolution of the original mortgagee's (Permanent TSB) title firstly to Cheldon on the 14 October 2015 and secondly by virtue of a mortgage sale and purchase deed of 18 April 2019 from Cheldon to Everyday Finance DAC.

32. Paragraph 20 of the first affidavit deposed to redactions having been effected in a deed of conveyance to Cheldon and the reasons for same. The appellant asserted at para. 6 of his affidavit: -

> "Mr. McCudden does not say how he knows the reasons why Cheldon carried out a particular operation or how these reasons come within his personal knowledge."

33. However this contention disregards the fact that Cheldon had been actively involved in pursuing the within litigation against the appellant for a number of years as successors in title to Permanent TSB. The appellant had possession of the redacted instrument whereby Cheldon acquired title and was aware of the basis on which Cheldon, Everyday's predecessor in title, claimed title to the original mortgagee's interest and the associated *lis.*

34. Since Everyday Finance acquired the title of Cheldon under the mortgage sale and purchase deed, Andrew McCudden as the legal manager of Everyday Finance could readily be understood by the trial judge to be a person directly in a position to have access to the unredacted versions of the earlier instruments which were muniments of title to all of the rights,

title and interests being acquired by Everyday Finance from Cheldon. In light of the means of knowledge clause contained in both affidavits, and the circumstances of the case, the court was entitled to accept the statement in the affidavit without more having regard to the facts and circumstances of the deponent.

35. The second basis on foot of which cross-examination was sought is that an error was made in the first affidavit at para. 62. This error was acknowledged and swiftly rectified in the second affidavit sworn a week later on 23 October 2019. In the later affidavit, Mr. McCudden explained that the averment at para. 62 of the first affidavit suggesting that Everyday Finance was the beneficial owner of the loan facility, facility letter and mortgage was "an innocent oversight". He apologised for the oversight.

36. The appellant in para. 10 of his grounding affidavit lay emphasis on the fact that "there is a flat contradiction between the contents of this letter and Mr. McCudden's averments to the effect that the Applicant is the full legal and beneficial owner of the mortgage". It was further asserted that "it is a most serious matter to mislead a court regarding the ownership of a significant asset." However there is no evidence that Mr. McCudden misled the court or intentionally set out to deceive the court. On the contrary, the second affidavit is consistent only with the fact that he corrected an error.

37. At para. 11 of his affidavit the appellant complains: -

> "…Mr. McCudden at no stage has explained when LC Asset 1 [S.à R.l] acquired its beneficial interest and in particular whether it was before or after the Applicant in the within proceedings acquired its legal interest. It is furthermore not clear what the status of the current plaintiff, Cheldon, had or still has in relation to its interest in the mortgage."

The affidavit continues: –

> "12. In view of the serious issue of money laundering and attempted concealment of beneficial ownership, I say that it is appropriate that leave to cross-examine Andrew McCudden be granted."

38. There was, however, no evidence of money laundering on the part of Everyday Finance adduced before the High Court.

39. The matter of primary concern to the trial judge, in connection with the application being brought by Everyday Finance, was that it could demonstrate that it held the legal title in the loan facility, facility letter and mortgage. That is so since it is the party in whom the said legal title is vested that is, as a matter of law, primarily entitled to proceed to execute a possession order.

40. The assertion that there was an attempt on the part of Everyday Finance to conceal beneficial ownership is contradicted by the contents of a letter dated 26 July 2019, exhibited to the first affidavit at AMc1, Tab 36 of the booklet of documents. This letter was served on the appellant and states: -

> "As of the transfer date, the purchaser is the legal owner of your loan and the entity that provides loan administration and relationship management services including the collection of repayments in relation to your loan. In addition, the purchaser will hold the benefit of your loan on behalf of LC Asset 1 [S.à R.l] (the 'Beneficial Owner')."

That document is expressly referred to and cited at para. 9 of the appellant's own affidavit.

41. The affidavits of Mr. McCudden are to be read together. When that is done, it is manifest that they do not contradict one another - quite the reverse.

Discretion

42. It will be recalled that O. 40, r. 1 provides that: -

> "…the Court <u>may</u>…order the attendance…" (emphasis added)

This formulation clearly vests discretion in the High Court judge to make an evaluation in the circumstances of the application as to whether it is warranted or not.

43. In circumstances where there are self-evident contradictions or inconsistencies of crucial importance to the matter in issue in the affidavits sworn on behalf of one party to proceedings, it is prudent that a court give careful consideration to an application seeking leave to cross-examine upon affidavit. This, however, was not such a case. The second affidavit merely corrects an error in the first. Cross-examination on an affidavit ought not generally be allowed on matters extraneous to the central questions and issues confronting the court in the context of the particular application to which the affidavit is directed and then only in circumstances where the trial judge is satisfied that it is necessary to resolve a fundamental or material issue.

44. The legal effect of deeds and instruments are primarily issues of law and are to be distinguished from questions of fact such as whether a deponent executed a deed or verifying the signature of a defendant to a deed. In the latter situation the court will more readily exercise its discretion and direct attendance for cross-examination as the decision in *Callan v. Heeney* (1907) 41 I.L.T.R. 161 illustrates.

(iii) Plaintiff "had only a bare title"

45. Ground 4 of the appeal contends that the trial judge erred in acceding to the motion to substitute Everyday Finance for Cheldon "in circumstances where the applicant had only a bare title to the loan and was taking instructions from a principal who is not on title in the proceedings."

46. At the date of the institution of the proceedings in 2012 Permanent TSB was the sole plaintiff and ultimately obtained an order for possession of the mortgaged properties in March 2014 which was subsequently upheld on appeal.

47. The general common law rule is that a mortgagee such as Everyday Finance, to whom the legal estate under a deed of mortgage has been conveyed, is the party entitled to seek

possession of the property and to enforce an order for possession. The contention that LC Asset 1 S.à R.l ought to be the moving party in the application, or a party to it, is wholly erroneous and is based on a misunderstanding of the respective rights of parties where a mortgage of unregistered land is created prior to December 2009. The essential principle in such cases is that a party in whom no legal title is vested cannot generally have a right at law to claim possession.

(iv) Champerty

48. The tort of champerty still exists in this jurisdiction as was illustrated by the Supreme Court's decision in *O'Keeffe v. Scales* [1998] 1 I.R. 290. As was observed by Hogan J. in *Greenclean Waste Management Limited v. Leahy* [2014] IEHC 314:-

> "16. In *O'Keeffe* the plaintiffs had incurred a significant liability to their particular solicitor and this bill of costs was included in a head of claim in an action for professional negligence brought by them against their former solicitor. The defendant contended that this arrangement amounted to champerty. The Supreme Court apparently indicated that the arrangement was not champertous, but indicated that even if it were, it could not be used to 'deprive people of their constitutional right of access to the courts to litigate reasonably stateable claims': [1998] 1 I.R. 290, 295, *per* Lynch J. It follows that even a champertous law suit should not be struck out on that ground, as the remedy in that situation is for the injured party to sue for damages for the tort of champerty."

49. In the instant case there is no evidence of champerty. The party for the time being entitled to the interest of the mortgagee has a constitutionally-protected entitlement to freely alienate its rights and title thereto. It and its successors in title have a legitimate interest in the proceedings for so long as its interest subsists. Even were champerty established, as the

O'Keeffe decision makes clear, it offers no answer to the claims of Cheldon or, in turn, Everyday Finance.

Conclusions

Ground 1 – Pending appeals

50. The language of O. 86, r. 7 is very clear. The High Court judge had full original jurisdiction to entertain the respondent's motion notwithstanding the pendency of appeals in relation to other procedural applications made in the same proceedings. The fact that the said appeals were pending before the Court of Appeal did not in anywise circumscribe the entitlement of Cheldon and/or Everyday Finance to bring this application before the High Court when same was warranted by intervening events.

51. In *Irish Bank Resolution Corporation Ltd. v. Halpin* [2014] IECA 3 the Court of Appeal acceded to a procedural application in relation to a pending appeal to permit the joinder of another party who had acquired an interest in the property as co-plaintiff/respondent. That was a decision made by that court in the exercise of its discretion on the specific facts arising and the evidence before it. It does not engage the doctrine of *stare decisis.* The appellant has failed to identify any previous judicial decision binding on the High Court judge which trenched on the full and original jurisdiction of that court to hear and determine the respondent's applications for the orders sought in the notice of motion. That original jurisdiction is reinforced by the terms of O. 86, r. 7 RSC. Further, there was no stay on the order of O'Connor J. of 24 May 2019, the subject of appeal no. 2019/254, which might preclude the proceedings from being progressed in the manner sought by Everyday Finance by its notice of motion of 18 October 2019.

52. No argument as would validly engage the doctrine of *stare decisis* was advanced at the hearing. There was no basis identified such as would support a contention that the trial judge was precluded from hearing Everyday Finance's application.

Grounds 2, 3 and 5 – Motion to cross-examine

53. There was ample evidence before the trial judge on which she could make a clear determination in relation to the issues without the cross-examination of Mr. McCudden being required to address any doubt or uncertainty concerning a material issue. In particular, in light of the evidence before her, there was no basis on which the trial judge could have had an issue or concern regarding alleged "money laundering" or alleged "attempted concealment" of the beneficial ownership in the manner contended for by the appellant. The second affidavit of Mr. McCudden had comprehensively addressed the issue of beneficial ownership.

54. I am further fortified in that regard having regard to O. 40, r. 15 which provides: -

> "The Court may receive any affidavit sworn for the purpose of being used in any cause or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received."

No basis was identified as to why the High Court judge ought to have considered cross-examination was warranted, since, when the two affidavits were read together, the second affidavit of Mr. McCudden merely clarified his first affidavit sworn about a week earlier.

55. The extent of the discretion vested in the High Court judge pursuant to O. 40, r. 1 is quite extensive as the rule makes clear. The affidavit of the appellant sworn on 24 October 2019 did not establish even a stateable basis for a serious allegation of money laundering or attempted concealment of beneficial ownership of the original mortgagee's interest when considered in the context of both affidavits of Mr. McCudden which were before the court and their voluminous exhibits. The reasons for refusal of the application were self-evident in all the circumstances.

56. The trial judge was entitled to accept the affidavits of Andrew McCudden in support of Everyday's application. Read together they each included valid means of knowledge clauses

and it was apparent, given the position of the deponent in the company, that he was a professional person with access to all the relevant documents and instruments in unredacted form and could thereby independently evaluate the commercial sensitivity of same.

57. The means of knowledge clauses in the affidavits of Mr. McCudden, that he made the affidavits "from facts within my knowledge and from a perusal of the books and records of the Applicant, save as where otherwise appears", in the specific circumstances obtaining in this case were sufficiently wide and clear to entitle the trial judge to accept that all facts and matters deposed to thereafter in the affidavits could be assumed to be of his own knowledge.

58. Accordingly I am satisfied that the trial judge did not err in refusing the appellant's motion to cross-examine Andrew McCudden and acted well within her discretion.

Ground 4 – Plaintiff "had only a bare title"

59. The respondent held the legal estate in the secured properties, which was unregistered land, as successor in title to the original mortgagee and as such for the reasons set out above was entitled to enforce all rights and remedies of the mortgagee in law.

60. Accordingly, I would dismiss the appeal for the reasons stated.

61. Insofar as the issues determined in appeals 2019/254, 2019/458, 2019/276 and 2018/378 overlap with the issues determined herein the said judgments are intended to be read herewith.

62. Since the appellant was wholly unsuccessful in this appeal and having regard to O. 99 (recast) and ss. 168 and 169 of the Legal Services Regulation Act 2015, costs follow the event. This appeal overlapped with appeal no. 2019/254 and a motion seeking a stay disposed of at the appeal hearing with an order that costs in the matter be costs in the cause in appeal no. 2019/254. I would propose one set of costs only in relation to these related appeals, said costs to be assessed in default of agreement, with the respondent being entitled to recover the costs of each respondent's notice filed. If either party wishes to contend for an alternative order, they have liberty to apply to the Office of the Court of Appeal within 14 days of delivery of this

judgment for a brief supplemental hearing on the issue of costs. If such hearing is requested and results in an order in the terms already proposed by the court, the requesting party may be liable for the additional costs of such hearing. In default of receipt of such application, an order in the terms I have proposed will be made.

63. The issue of costs in appeals 2018/378, 2019/458, 2019/276 and other related matters not expressly referred to therein are dealt with separately in the judgments pertaining thereto.

64. Noonan J. and Haughton J. are in agreement with this judgment.