[2024] IEHC 146

THE HIGH COURT

[Record No. 2023/12CA]

BETWEEN

START MORTGAGES DESIGNATED ACTIVITY COMPANY

PLANTIFF/RESPONDENT

AND

MARTIN WICKHAM

DEFENDANT/APPELLANT

JUDGMENT of Mr Justice Barr delivered on the 7th day of March 2024.

Introduction.

1. This is an appeal by the defendant/appellant (hereinafter 'the defendant') against an order for possession that was made in the Circuit Court on 25 January 2023 granting the plaintiff/respondent (hereinafter 'the plaintiff') an order for possession in respect of the defendant's property at Wheatfield, Ardclough, Straffan, County Kildare.

2. For ease of reference, the property in respect of which the order for possession was sought by the plaintiff, will hereafter be referred to either as 'Wheatfield' or 'the property'.

3. Put at its simplest, the plaintiff's case is that in April 2006, the defendant was offered a loan of €1m by Permanent TSB to purchase the property at Wheatfield. The defendant accepted the offer and received the loan from the bank. He executed an indenture of mortgage/charge in favour of the bank as security for the loan. That mortgage was registered in the Registry of Deeds.

4. It is alleged that in or about 2011, the defendant began to fall into arrears in his payments under the mortgage. He made a last payment on 10 February 2012. He has not paid any money on foot of the loan since then.

5. In 2017, the solicitor acting for the bank demanded repayment of the loan. When it was not repaid, a letter was sent demanding that the defendant deliver up possession of the property. When the defendant did neither of these things, a civil bill seeking an order for possession of the property was issued by Permanent TSB on 26 November 2017.

6. By a deed of transfer dated 01 February 2019 and by a deed of conveyance and assignment of the same date, the defendant's loan and the accompanying security were transferred by Permanent TSB to the plaintiff. A letter known as a "goodbye" letter was sent by the bank to the defendant on the same date. That was followed by a "hello" letter sent by the plaintiff to the defendant on 07 February 2019.

7. On 02 September 2019, an order was made in the Circuit Court substituting Start Mortgages DAC as plaintiff in the proceedings.

8. It is the plaintiff's case that as the creation of the loan and the execution of the mortgage as security for the loan have been properly proven; along with proof of transfer of the loan and of the underlying mortgage from the bank to the plaintiff; and as it is clear from the uncontested statements of account that had been exhibited to the affidavit sworn on behalf of the plaintiff, that there has been a clear "event of default" due to the nonpayment by the defendant of any sums due under the loan since 2012; the plaintiff is therefore entitled to an order for possession of the property.

Grounds of Defence put forward by the Defendant.

9. The defendant defended the proceedings in the Circuit Court and the appeal to this Court, as a lay litigant. In the proceedings to date, there have been in excess of fifteen affidavits sworn, which, together with the exhibits thereto, run to approximately 754 pages.

10. It is not necessary to summarise all the affidavits that have been sworn in this action to date. Many of them are repetitious and contain a considerable amount of detail that is irrelevant to the appeal. The relevant grounds of defence put forward by the defendant, can be summarised in the following way: first, he alleges that Wheatfield was at all times his principal private residence.

11. This is disputed by the plaintiff, which pointed out that the facility letter described the loan type as "Further Advanced Tracker Mortgage (ECB + max. 0.9%) Investment Loan (INT Only)". The plaintiff also relies on a mortgage protection assurance form completed and signed by the defendant on the date when he accepted the loan on 04 May 2006, in which he ticked the box which stated that the dwelling at Wheatfield was not intended for use as his, or his dependants', principal residence. It stated that his principal residence and the principal residence of his dependants, was situate at 27 Forest Park, Courtown, County Wexford. That form was signed by the defendant and his signature was witnessed.

12. The plaintiff accepts that while Wheatfield was not the principal private residence of the defendant at the time that the loan was given in 2006, at some later date, which has not been specified, it became his principal private residence and remains so to the present time.

13. The defendant maintains that he has resided in Wheatfield since in or about 1999. He stated that he remortgaged Wheatfield to fund his divorce settlement with his

ex-wife. He stated that this was known to PTSB when they made the loan to him. He stated that this was evident from the fact that all the correspondence, including the facility letter and all subsequent documentation was sent by Permanent TSB to him at the address at Wheatfield.

14. The defendant also pointed out that he had obtained tax relief at source on the Wheatfield mortgage. He stated that this form of tax relief was only available on a person's principal residence. He exhibited interest certificates issued by Permanent TSB, which showed that he had not received TRS on the property at Courtown, County Wexford, for the years ending 31 December 2008 and 2012; whereas TRS had been applied to the mortgage applying to Wheatfield, as evidenced by interest certificates issued for the year ending 31 December 2011 and 31 December 2012. He submitted that this showed that Wheatfield was his principal residence and that the Courtown property was not his residence, and that these facts were well known to the bank.

15. The defendant also exhibited a number of written statements furnished by relatives and friends, who confirmed that he had resided at Wheatfield since in or about the year 2000. A statement from one Martina Gibbons dated 01 July 2021, stated that she had known the defendant for the previous sixteen years, as his daughter had been very good friends with her daughter. They had visited the house at Wheatfield regularly. She stated that she had never known the defendant to live at any other address. A statement was furnished by Mr Seán Belde, who is a nephew of the defendant. He stated that he had known the defendant since he was nine years of age. He stated that over the previous 23 years, he had frequently visited his uncle in his house at Wheatfield. He had always known that property to the be the defendant's home. His statement was dated 30 June 2021. A statement dated 05 July 2021, was furnished by David Wickham, another nephew of the defendant, who stated that his uncle had lived at Wheatfield for

the previous 20 years. A statement was furnished by one Siegfried Blanc, who stated that he had known the defendant since 2004. When he moved from France to Ireland in June 2005, he stated that he stayed at Wheatfield with the defendant and his family as a non-paying guest until early 2009. His statement was furnished on 12 July 2021.

16. Finally, the defendant pointed to the fact that he had obtained a loan for the purchase of the property at Courtown, Co. Wexford, which had been purchased as part of a holiday rental scheme. That loan had been partly secured by a lien over the capital allowance that would arise on the rental payments received in respect of the property. It was not possible under the scheme for the property to be used as the owner's private residence.

17. It was submitted by the defendant that the significance of whether Wheatfield constituted his principal private residence at the time of the loan in 2006, lay in the fact that if it did, then it meant that the provisions of the Code of Conduct on Mortgage Arrears ("CCMA") and the Mortgage Arrears Resolution Process ("MARP") would have been applicable to him. They had not been applied by the bank, or the plaintiff, in this case.

18. The second main ground of defence raised by the defendant was to the effect that the loan which he had obtained from the bank in 2006, was agreed to have been an interest only loan for the period of the loan, which was 25 years. The loan was for €1m, in respect of a property which was stated to be valued at €2m at the time.

19. This assertion by the defendant was not accepted by the plaintiff, which pointed to the fact that the special conditions applying to the facility letter dated 18 April 2006, clearly stated as follows:

> *"Permanent TSB will accept monthly repayments, as set out in the letter of approval, representing repayment of interest only (as may be varied from time*

to time and including insurance premiums where applicable) for the first three years from the date of cheque issue or such other period as Permanent TSB may decide. Permanent TSB reserves the right to review the deferral of the repayment of principal at any time during the term of the loan, including the first three years of the term and may require the applicant to cease the interest only repayment and require the repayment of principal and interest and the applicant will immediately arrange to pay the revised monthly repayment comprising the repayment of principal and interest calculated over the remaining term so that the principal and interest will be discharged within the existing term of the loan."

20. The plaintiff also referred to the European Standardised Information Sheet (ESIS) issued by the bank, which had accompanied the letter of offer, wherein on p.1 and 2, it was made clear that the monthly repayment comprised of interest only, with repayment of principal deferred for the first three years of the term, or for such other period as the lender may decide, subject to the right of the lender to review the deferral of the repayment of principal at any time. It provided that on review, the lender may require the loan to be repaid by way of principal and interest for the remainder of the term. This provision was repeated on p.2 of the document.

21. In response to that assertion, the defendant made the following points: first, he stated that in 2006, he would never have agreed to repayment of principal and interest, because he could not afford that level of repayment. The loan had been taken out as a remortgaging of the property, so as to finance his divorce settlement with his ex-wife. He stated that he was only able to afford the repayments on an interest only basis.

22. The ESIS referred to, had set out an illustrative amortisation table on p.4, which had shown all the repayments of both capital and interest that would be repayable over

the term of the loan. It very clearly showed that no capital would be repaid over the period, but that interest would be paid at €2,833.33 per month, amounting to €33,999.96 per annum. The table showed that at the end of the period he would have paid interest of €850,105.32 and that the original loan of €1m would remain due and owing at that time.

23. The defendant pointed out that on p.5 of the document it was clearly stated: "The loan is an interest only loan for the duration of the term and the capital will be paid in full at the end of the term."

24. The defendant referred to the statements of account that had been furnished by the bank and exhibited in the original grounding affidavit sworn on its behalf by Mr David Smith on 09 November 2017. That statement of account clearly showed that on 02 August 2011, a "new product" was said to have been applied, after which the repayments due, rose substantially. The defendant stated that the reference to "new product" indicated that the bank had applied a new loan, with new terms, as and from that date forward. He argued that that action had been unlawful, in that he had never consented to any new terms being incorporated into his loan, nor had he agreed to any new loan. The defendant also pointed out that in the subsequent statements of account, which had been exhibited in the further affidavits sworn on behalf of the plaintiff, the reference to "new product" had been deleted.

25. The defendant submitted that the unlawful change in relation to the terms of repayment of his loan, which had been imposed as and from September 2011 onwards, had hit him at a particularly bad time due to the fact that he had been made redundant in January 2011; his daughter had died in February 2011; and in the summer of 2011, he had been in the process of trying to start a new business. He submitted that the unlawful imposition of new terms in respect of the loan had contrived to bring about a

situation where he was not able to make these repayments and therefore had defaulted on the repayments, which the bank and the plaintiff maintained were due under the loan.

26. The defendant submitted that having regard to the very clear statements that were contained in the ESIS and having regard to his evidence in relation to his circumstances at the time of taking out the original loan in May 2006, there was a question of fact which could only be resolved by oral evidence in relation to whether it had been agreed that it was to be an interest only loan for the entire period of the loan.

27. The defendant raised a number of ancillary grounds of defence, which can be summarised briefly. He maintained that the statements of account that had been exhibited to the affidavit sworn on behalf of the plaintiff, were deficient, because they purported to show the movements into and out of the loan account, without taking any account of the fact that the loan had been allegedly transferred from the bank to the plaintiff on 01 February 2019. The defendant submitted that if such a transfer had properly taken place, the statement of account should show the closure of the original account with the bank and the opening of the new account with the plaintiff from February 2019 onwards. However, that had not been done. The statements of account exhibited merely showed that it had been one account, that had proceeded in an unbroken fashion from its inception on 10 May 2006, down to the date on which the most recent affidavit was sworn.

28. The defendant also raised a point in relation to the absence of any certificate showing that stamp duty was not payable on the deed of transfer, or the deed of conveyance and assignment, in respect of the loan and security by the bank to the plaintiff. The defendant accepted that these deeds were exempt from paying stamp duty, but he submitted that where they were availing of a general exemption, they were obliged to obtain a certificate of exemption from the Revenue Commissioners. He

submitted that as that certificate had not been exhibited, the two deeds were inadmissible in evidence.

29. On the basis of the defences put forward, the defendant asked the court to either allow the appeal and refuse the reliefs sought by the plaintiff; or to adjourn the matter pending the outcome of separate proceedings that he had brought in the High Court against the plaintiff and the receivers appointed by them over the property, in respect of the alleged unlawful appointment of the receivers and alleged unlawful acts carried out by the receivers in the course of the receivership. In the alternative, the defendant asked the court for an order remitting the appeal to plenary hearing.

Conclusions.

30. The court has read the voluminous documentation in this case. It has also carefully considered the submissions made by both parties.

31. This is an application by way of summary procedure for an order for possession in respect of the defendant's property at Wheatfield. In *Bank of Ireland Mortgage Bank v Cody* [2021] IESC 26, Baker J, delivering the judgment of the Supreme Court, noted that the availability of a summary type process was desirable in the interests of justice, where it was held that it was in the interests of justice that there be a relatively inexpensive, accessible and quick process to provide relief in cases where it was clear that no arguable defence existed. Referring to the judgments in *Ulster Bank v Beades* [2019] IESC 83 and *KBC v Brennan* [2020] IEHC 247, she was satisfied that the procedure by which possession of land could be obtained summarily, did not offend the requirements of fairness to a defendant.

32. However, the judge pointed out that the fact that a matter could be dealt with summarily, did not mean that it would not get full or proper consideration. She stated as follows at para. 47:

> "*To say that an action is to be brought in a summary manner does not mean that the solemnity of the process, the verification of the facts, or the relevant laws of evidence are not applied with the same robustness as in other litigation. What is denoted by the expression is a process by which a lengthy action with oral evidence is avoided and, at least in straightforward or commonplace actions, this is a perfectly appropriate way of seeking possession where no difficult issues of fact arise for consideration. The proceedings are not to be treated as a sort of shortcut or a less satisfactory administration of justice. The process is still a trial of a claim in which the burden lies on the plaintiff to establish its case. It may be, as in many or most possession claims, that the proofs are relatively familiar and readily identifiable, but that does not mean that the defendant is to be denied the right to defend, and the process is judicial and not administrative*."

33. Baker J went on at paras. 69 *et seq* in the *Cody* judgment to examine the options that were available to a court hearing an application for summary judgment. In effect, she held that where the plaintiff's case was very strong and there was no arguable defence, the court should proceed to grant an order for possession in favour of the plaintiff. Alternatively, where the defendant had established a strong defence to the claim, the court could refuse the reliefs sought by the plaintiff. However, there were cases which would fall between these two extreme points, where it would be appropriate to remit the matter to plenary hearing. She stated as follows at para. 76:

> "*Many applications for summary judgment would fall between these two extremes and will involve the proffering of evidence or argument by a defendant by way of defence which is not sufficient to rebut the evidence of the plaintiff to enable the judge to make a positive finding against the plaintiff, but which offers enough doubt as to the truth or completeness of the plaintiff's evidence, or credibly presents reasonable arguments or evidence that a defendant has a basis of defence which merits further scrutiny, evidence or argument. In that instance the trial judge is constrained by the inability to decide between contested affidavit evidence of fact, or resolve complex questions of law, the action cannot therefore be disposed of summarily and will be adjourned to plenary hearing*."

34. Finally, in the event that the court hearing a Circuit Court appeal, came to the conclusion that it was desirable in the interests of justice to remit the matter to plenary hearing, the appropriate course was to adjourn the appeal to plenary hearing in the High Court exercising its statutory appellate jurisdiction: see para. 108.

35. Having considered all the papers and submissions in this case, the court is satisfied that the defendant's appeal against the order made in the Circuit Court, must fail.

36. The defendant's first line of defence was in relation to the argument that Wheatfield was at all material times his principal private residence. He argued that as the property was his primary residence, the plaintiff was obliged to follow the provisions of the CCMA, as issued by the Central Bank of Ireland, and in particular, to follow the MARP as set down therein. It was submitted that as neither the bank, nor the plaintiff, had complied with that process, the plaintiff was not entitled to the order for possession of the property.

37. The court has set out the evidence which has been furnished by the defendant in support of his argument that Wheatfield was his principal private residence since in or about 1999/2000. Even if the court were to accept that evidence at its high water mark, the court is satisfied, on the basis of the documentary evidence produced by the plaintiff, that whatever may have been the true facts on the ground, the defendant had entered into the original contract of loan and mortgage with the bank, on the basis that Wheatfield was not his principal private residence in 2006.

38. This is clearly established by two documents, each of which were signed by the defendant. The first was the facility letter dated 18 April 2006, which clearly stated under the heading loan type: "Further Advance Tracker Mortgage (ECB + max. 0.9%) Investment Loan (Int Only)". Thus, the heading of the loan offer, made it abundantly clear that it was not a loan that was being offered in respect of the purchase of a family home. It was being made clear that the loan had been applied for and granted on the basis of an investment opportunity.

39. This position was copper fastened by a document dated 04 May 2006 headed Mortgage Protection Assurance. In that document, the defendant acknowledged that he had been offered the opportunity to take out mortgage protection assurance to cover the mortgage on Wheatfield, but he was declining that offer, because the property was not intended for use as his principal residence. In the document it was clearly stated as follows:

> *"I do not wish to take out mortgage protection assurance for the following reasons and confirm that I understand, fully, the implications of not having the above cover. The dwelling is not intended for use as my or my dependent's principal residence, as my principal and my dependent's principal residence is situated at: 27 Forest Park, Courtown, County Wexford."*

40. That document was signed by the defendant and his signature was witnessed by one Catherine Whelan.

41. Thus, it is clear that at the time of entering into the contract of loan, the defendant was clearly warranting to the bank that Wheatfield was not his primary residence. That he may subsequently have adopted it as his private residence, cannot be used as a mechanism by which he could unilaterally change the terms of the contract, from being a loan in respect of an investment property, into a loan in respect of his principal private residence.

42. In *Charleton v Coates* [2014] IEHC 677, Reynolds J found that at the time of the execution of the mortgage in 2005, the defendant had resided in a different property as his family home. The defendant had maintained that the property had become his family home since 2015. On that basis, he alleged that the original lending bank and the plaintiff, as assignee of the loan, were bound by the provisions of the CCMA and the MARP process. He argued that as he had not been afforded the opportunity of entering into the MARP process, the receivers, who had been appointed over the property, were not entitled to an interlocutory injunction requiring him to vacate the property, in advance of seeking a formal order for possession.

43. Reynolds J, having referred to the decisions in *ACC v Quinn* [2014] IEHC 677, *Farrell v Creedon* [2015] IEHC 711 and *Tyrrell v Wright & Anor.* [2018] IECA 295, held that as the mortgaged property was not the principal residence of the defendant at the time that he executed the mortgage, the proposition that he was somehow entitled to unilaterally alter the terms of the loan agreement, some ten years after that agreement had been entered into, was simply unsustainable: see para. 38.

44. That decision was appealed to the Court of Appeal; however the appeal only proceeded on a very narrow basis, in relation to the jurisdiction of the High Court to

grant interlocutory relief of the nature sought by the receivers. Before the Court of Appeal, counsel for the defendant had accepted that he could not argue that the CCMA applied to the defendant in light of the decisions in *Fennell v Creedon* and *Tyrrell v Wright*. In light of that concession, the Court of Appeal did not consider the matter further: see para. 32.

45. In *Irish Life & Permanent plc v Dunne* [2016] 1 IR 192, the Supreme Court had to consider whether noncompliance with the CCMA, could amount to grounds on which a court could refuse to grant an order for possession. Clarke J (as he then was), delivering the judgment of the court, reviewed the issue of the legal affect of the CCMA at paras. 46 *et seq*. of his judgment. He concluded that, with the exception of the provisions in relation to the moratorium period, prior to which legal proceedings could not be instituted, as set out at paras. 45 and 47 of the MARP, the CCMA did not affect the private law rights of parties generally: see para. 3 of the headnote and para. 73 of the judgment.

46. In this case, the moratorium period was more than observed, because the proceedings did not commence until five years after the making of the last payment by the defendant in 2012.

47. While it may be argued that the operation of the moratorium period of either three months from the date of the relevant letter, or eight months from the start of the accrual of arrears, can only be ascertained once both dates unknown, due to the fact that in both paras. 45 and 47 of the MARP, reference is made to whichever period "is the later"; thereby implying that in order for that to be determined, it would be necessary to have information as to the date of the letter and the date of the start of the accrual of the arrears; the court is satisfied that this issue does not have to be determined on this appeal, due to the fact that, as already stated, the court is not satisfied that the bank were

aware that Wheatfield was his principal private residence at the time when the loan was issued. The fact that it is accepted by the plaintiff that the property became the defendant's principal residence at some time thereafter, is immaterial. There is no substance in his submission that the order for possession sought, should not be granted for failure to comply with the CCMA or the MARP process.

48. The second main ground of defence put forward by the defendant was to the effect that it had been agreed between the parties that the repayments due under the loan were to be interest only for the duration of the loan period. Some of the documentation exhibited in the affidavits, is equivocal in this regard.

49. While the facility letter and the special conditions attaching thereto, which were accepted in writing by the defendant, contained clear statements that an interest only repayment period would apply for the initial three years, or for such period thereafter as may be determined by the bank; and while such statements were repeated in p.1 and 2 of the ESIS; there were equally clear statements to the opposite effect on p.3 and 4 of the ESIS; together with the illustrative amortisation table, which clearly showed the principal of the loan being due and owing at the end of the loan period.

50. As against that, the court has noted that a letter written by the defendant on 10 August 2011, which he wrote in response to a notification from the bank that the loan was going to be transferred to a principal and interest repayment schedule, the defendant set out the difficult financial and other circumstances that he was in at that time, which had resulted in him falling behind on several interest only repayments, but he stated that he expected to be able to catch up on the arrears by the end of September 2011. Of significance, he concluded the letter in the following terms:

"Therefore, in view of this information, I would respectfully request that you please continue my account with repayments of interest only. I am happy to supply documentation to support my letter if needed."

51. The final paragraph in that letter constituted a request to the bank to reconsider their position in relation to the imposition of a principal and interest repayment schedule. There was no assertion that by so doing, the bank was acting in breach of contract by moving the repayments to principal and interest repayments.

52. The court is satisfied that the content of this letter, taken with the very clear terms set out in the special conditions attaching to the facility letter, which were repeated on p.1 and 2 of the ESIS, which accompanied it, establish that the contract was for a loan that would be repayable on an interest only basis for the first three years and for such period thereafter as may be determined by the bank. Thus, the bank was entitled to transfer the repayments to a principal and interest basis in 2011.

53. Even if the court is wrong in this finding, it was accepted by the defendant that he had not made any payments on foot of the loan since February 2012. In open court he stated that because the bank had transferred the repayments to a principal and interest basis, which he could not afford, he had stopped making any payments. Thus, it was accepted by the defendant that for the last twelve years, he has not made any repayments in respect of this loan.

54. On an application for an order for possession, the court need only be satisfied that there was an event of default by the borrower, such as to trigger the right to act on the mortgage which had been given as security for the loan. The court is satisfied that on the basis of the statements of account that had been exhibited to the plaintiff's affidavit and on the concession made by the defendant at the hearing of the appeal, there has been a clear event of default in this case, which was sufficient to enable the bank

and the plaintiff to act on the security that had been given by the defendant, being the mortgage over the property at Wheatfield.

55. The other defences raised by the defendant can be dealt with fairly briefly. His complaint in relation to the format of the statements of account exhibited in the affidavit sworn by Ms McCarthy on behalf of the plaintiff, does not have substance. While the statement of account appears in an unbroken format from its inception with the bank in May 2006, down to the latest date on which the accounts have been furnished, there is no prejudice to the defendant by the statement of account being in this format. This is due to the fact that the defendant does not deny that the last payment was made by him in 2012. Nor does he assert that the accounts are materially wrong in relation to any of the credits that have been allowed against the account. The format of the statement of account was explained in the affidavits by virtue of the fact that the account data was migrated from the bank to the account maintained by the plaintiff, at the time of the transfer in February 2019. There is no prejudice to the defendant by this form of the statement of account.

56. The argument raised by the defendant in relation to the lack of any certificate of exemption having been issued by the Revenue Commissioners in respect of the deed of transfer, or the deed of conveyance and assignment, is without substance. The defendant accepts that these documents are exempt from stamp duty. There is no reason why they cannot be accepted in evidence.

57. In conclusion, the court is satisfied that the plaintiff has established the right to an order for possession of the property. The court is satisfied that the plaintiff has established that the loan set out in the facility letter dated 18 April 2006, was accepted by the defendant on 03 May 2006. The court is satisfied that he received the loan on or about 10 May 2006. The court is further satisfied that as security for the loan the

defendant executed the indenture of mortgage/charge over the property at Wheatfield on 12 May 2006. That mortgage was registered in the Registry of Deeds on 26 January 2007.

58. The court is satisfied from the affidavits sworn on behalf of the plaintiff and from the documents exhibited thereto, that the defendant had fallen into arrears in respect of the repayment of the loan as and from 2011. The court is satisfied that the last payment made by the defendant to the account was in February 2012. Repayment of the entire loan had been validly demanded by the bank's solicitor by letter dated 26 September 2017. A letter of demand seeking delivery up of possession of the mortgaged property was made by letter dated 06 October 2017. Neither of these requests were complied with.

59. The court is satisfied that the bank issued the civil bill for possession on 21 November 2017, as it was entitled to do. The court is further satisfied that by virtue of the deed of transfer dated 01 February 2019 and the deed of conveyance and assignment dated 01 February 2019, there was a transmission of the bank's interest in the loan and in the mortgaged property to the plaintiff.

60. The court is satisfied that having regard to the letters that issued from the bank to the defendant on 01 February 2019 and the letter from the plaintiff to the defendant on 07 February 2019, that the defendant was properly notified of the assignment of the bank's interest in the loan and in the mortgaged property to the plaintiff.

61. The court notes that on 02 September 2019, an order for substitution was made providing that Start Mortgages DAC would be substituted as plaintiff in the action. The court is satisfied that having regard to all these matters, the plaintiff is entitled to an order for possession of the defendant's property at Wheatfield.

Proposed Order of the Court.

62. Having regard to the conclusions reached by the court in its judgment herein, it is proposed that the final order of the court will provide as follows:

(a) Dismiss the appeal brought by the defendant/appellant and affirm the order of the Circuit Court dated 25 January 2023;

(b) Lift the stay that was placed on the order for possession in the Circuit Court.

63. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

64. The matter will be listed for mention at 10.30 hours on 9th April 2024 for the purpose of making final orders.