

Group Briefing

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Loan Sales: Important Judgment in relation to Registered Land

A judgment of Ms Justice Baker delivered on 29 July 2016 will be of interest to purchasers of loan portfolios, insolvency practitioners and conveyancers alike.

In Harrington v Gulland Property Finance Limited, the High Court granted an interlocutory injunction restraining a receiver from taking possession of certain registered properties owned by the Harringtons. The Court held that the Harringtons had made out an arguable case that the receiver was not validly appointed because Gulland – the party purporting to make the appointment having acquired the loans and related charge from IBRC – was not yet registered as owner of that charge in the Land Registry.

BACKGROUND

Gulland acquired the interest of IBRC in the Harringtons' loans and security in February 2015. In February 2016 Gulland sought to appoint a receiver over the Harringtons' properties. Following an ex parte (emergency) application by the Harringtons, the High Court granted an injunction restraining the receiver from acting. A further hearing was then held on

whether the injunction should remain in place until a full trial of the case. Ms Justice Baker's judgment was given after that hearing.

ARGUMENTS MADE BY THE HARRINGTONS

Although Gulland had acquired the relevant loans secured on the units from IBRC (and this fact was not in dispute), Gulland had not yet registered the transfer of the charge over the units at the Land Registry. This registration is achieved by filing a "Form 56", which is typically executed by a seller at completion of a loan purchase, along with a "global" deed of transfer of all the seller's rights in respect of the relevant loans and security. Gulland had not yet filed its Form 56 at the time that it purported to appoint the receiver, and therefore was not registered as the owner of the relevant charge at that time.

The plaintiffs argued that until such time as Gulland was registered as owner, it had no interest in the charge over the property and that, accordingly, Gulland did not have the power, whether contractual or statutory, to appoint the receiver at the date of the deed of appointment.

JUDGMENT

The High Court held that where a charge over registered land has been transferred, Section 64(2) of the Registration of Title Act 1964 should be interpreted to mean that until a Form 56 is registered in the Land Registry, no interest in the charge, including contractual rights arising under that charge, is conferred on the transferee. On that basis, the High Court determined that the plaintiffs had made out an arguable case, sufficient to justify the granting of an injunction until a full hearing, that Gulland was not entitled to appoint a receiver.

ANALYSIS

The judgment appears to interpret Section 64(2) in a much broader way than was previously understood. While practitioners always accepted that the registration of a Form 56 had to be attended to before the Land Registry would permit the transferee of a charge to deal with a property (for example, by selling as mortgagee), it was previously thought that Section 64(2) would not limit the ability of the transferee to rely on its contractual rights under the charge for other purposes not

connected with the Land Registry, such as the right to appoint a receiver.

This thinking was based on the understanding that the usual “global” deed of transfer executed on completion of a loan sale operated to transfer the legal rights associated with loans and security as a matter of general law, and that Section 64(2) dealt only with a requirement to register the Form 56 before the transferee could make any other applications to the Land Registry.

SCOPE

The judgment is limited to charges over registered land, and appears to be further limited in its application to cases where charges have been transferred, so that the position of

charge holders who originated the relevant security should not be affected.

A distinction is also made in the judgment in respect of charges transferred by statute - such as schemes under Part III of the Central Bank Act 1971, and Cross-Border Mergers – rather than simple contractual assignments.

It is not clear from the judgment as to whether the only instrument of transfer entered into between IRBC and Gulland in relation to the charge was a Form 56, or whether a “global” deed of transfer with respect to security interests was also executed, and if not whether the existence of a “global” deed of transfer along with a Form 56 would have had any impact on the decision.

The judgment was given in the context of an injunction application. Therefore, it is possible that the Court may come to a different conclusion at full hearing. As an interlocutory judgment, this decision does not currently represent binding precedent as to the interpretation of Section 64(2), however, it is of persuasive authority as to the current position under Irish law.

Until a further judgment on the point is available, a cautious approach should be adopted to ensure that all relevant registrations with respect to charges over registered land are made prior to enforcement of security.

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