

The High Court reiterates its position on the production and inspection of unredacted documents from a loan sale purchaser.

Analysis of *McFadden v Pentire Property Finance & Tom Kavanagh* [2021] IEHC 793 and the judgment of Ms. Justice Reynolds dated 16th December 2021 (the “**Judgment**”)

Practice Focus

- Borrower (Plaintiff) request for inspection and production of unredacted documents under Order 31, rule 18 of the Rules of the Superior Courts (the “**RSC**”)

Overview

- On 10th April 2018, the Plaintiff issued a motion for discovery. Subsequently, the Defendants furnished substantial documentation albeit in a redacted format, and the motion was ultimately struck out.
- The Plaintiff then issued a motion for the inspection and production of *inter alia* “the Purchase Deed”, “the Deed of Novation”, “the Deed of Assignment”, “the Copy Supporting Power of Attorney Document for Form 56” under Order 31 rule 18 of the RSC, in circumstances where the redacted documents provided under discovery were “deficient”.

The Court's findings:-

In examining the Plaintiff's application, Ms. Justice Reynolds observed and held as follows:-

- Order 31, rule 18 (2) of the RSC states *"An order shall not be made under this rule if and insofar as the Court shall be of the opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs"*.
- At the outset, the Court referenced and applied the judgment of Mr. Justice McDonald in *Everyday Finance DAC and Enda Woods and Ciaran McNamara [2019] IEHC 605*, as being the seminal authority on the approach to be taken in relation to such applications. In that judgment, Mr. Justice McDonald held as follows:- *"... it seems to me that it is necessary in the interests of disposing fairly of that issue that the Defendants should see the relevant parts of those deeds which evidence the transfer of their loans and security from Allied Irish Banks to the Plaintiff. However, the cases show that the Courts have consistently taken the view that it is only those provisions evidencing the assignment of the relevant loans and the security which are relevant in this context and that it is reasonable for the balance of the documents to be redacted."*
- The Plaintiff acknowledged receipt of documents but sought an order directing that unredacted copies to be furnished.
- Regarding production of *"Copy Supporting Power of Attorney Document for Form 56"*, the Court noted the Plaintiff is a third party to the transaction between the loan sale vendor and loan sale purchaser and has *"no entitlement to seek to look behind the authority of the person(s) who executed the relevant Form 56"*.
- The Court stated that *"there can be no issue but that the Register of Titles is conclusive evidence as to the title of the owner to land appearing on the Register"* (per section 31 of the Registration of Title Act, 1964).
- Regarding the Plaintiff's contention that certain redacted documents were *"deficient"*, the Court held *"it is notable that he has failed to identify any basis for this claim nor indeed has he claimed any prejudice arising"*.

- The Court was satisfied with the necessity to redact parts of the Purchase Deed, the Deed of Novation and the Deed of Assignment for *"reasons of commercial sensitivity and customer confidentiality"*
- Significantly, the Court took the view that the Plaintiff had failed to identify why the inspection of the unredacted documents was required and refused the Plaintiff's motion for relief, stating as follows:- *"I am satisfied that this is a classic case of the plaintiff seeking relief to effectively enable him to carry out a fishing expedition."*

Key takeaways

- The onus rests on the party seeking the production and inspection of documents under Order 31, rule 18 of the RSC to satisfy the Court, that production is necessary.
- The Court is reluctant to provide documents under Order 31, rule 18 of the RSC where the applicant is a third party to the transaction at issue, such as a Form 56.
- The Court is reluctant to provide documents registered in the Land Registry under Order 31, rule 18 of the RSC, as this goes against the conclusiveness of title of the Registry (per section 31 of the Registration of Title Act, 1964).

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