THE HIGH COURT

[2026] IEHC 432

[Record No. 2009/501 SP]

BETWEEN

ACC LOAN MANAGEMENT DAC

PLAINTIFF

AND

NIALL QUINN

DEFENDANT

<u>JUDGMENT of Mr Justice Liam Kennedy delivered on 6 July 2026.</u>

1. Everyday Finance DAC claims to be entitled to the benefit of an order for possession in these proceedings which was made and perfected nearly 12 years ago, on 30 April and 15 May 2014 ("the 2014 Order"). The order was in favour of the plaintiff, ACC Bank PLC and, despite the time elapsed, the applicant seeks liberty to issue execution in its own name and, if necessary, an order substituting it as the plaintiff. White J made the 2014 Order after a four-day hearing, granting an order for possession (with a four month stay) in respect of two properties, one at 140 Morehampton Road, Donnybrook, Dublin ("the Property"). The other property ("the Athlone Property") is not in issue, having been sold in 2023. The issues therefore concern the applicant's claim to be entitled to enforce the 2014 Order and whether it should be allowed to do so nearly 12 years later. I will deal with those issues separately before dealing with the procedural point as to whether the applicant must be joined as a party. However, I will first deal with an issue which delayed and complicated the hearing.

2. Although unrepresented when he filed his affidavit in response to the application, the defendant was subsequently represented in the proceedings by solicitors and counsel. Ironically, the firm ultimately retained to represent him at the recent hearing before me was the very firm which he retained at the outset in 2009, but he quickly discharged them and they appear to have played no further role until they recently came on record once again, approximately seventeen years later. In the intervening period, the defendant represented himself at various times and was represented by other firms at other stages. In any event, the solicitor and counsel ultimately retained by the defendant approximately one month before the hearing, appeared on his behalf at one of the listings, which took place on 19 February, but not at a listing on 26 February. No further affidavit was furnished on the defendant's behalf once he secured legal representation nor was it suggested that he had been inhibited in that regard. The parties were directed to exchange submissions and the applicant filed and served written submissions dated 9 March 2026. However, the defendant did not deliver submissions as directed.

3. When the application was called for hearing before me on 24 March, the defendant's counsel apologetically informed me of a difficulty that had arisen due to the absence of any representative of his instructing solicitor. He also observed that he was at a disadvantage because, despite his having chased his instructing solicitor, he hadn't received papers from him. However, he had received a link *"very kindly sent by the plaintiff's solicitor"* enabling him to print the papers himself, so he did have papers, albeit not from his solicitor. He added that, having read the papers to the best of his ability in the limited time available, he had prepared written legal submissions (which had not been served). It reflects extremely poorly on the solicitor that his counsel received the full motion papers late in the day (and only through the good offices of the plaintiff's solicitors). It was the responsibility of the defendant and his lawyers to ensure that they were prepared for the hearing. The solicitor should have ensured that counsel was properly briefed. In the event, due to the plaintiff's solicitor's collegiate intervention, the defendant was not prejudiced. The disarray must have been disconcerting for counsel, but he had sufficient time to review the papers and prepare the 10-page, unserved, written submissions. He did not request further time to prepare.

4. The issue which did delay the start of the hearing arose because, although counsel had chased his solicitor the previous day and again that morning, it only emerged that morning that the solicitor had not arranged for counsel to be attended. Although he envisaged an agent attending on his behalf, he hadn't made the necessary arrangements. Just before the callover, the solicitor informed his counsel that the agents weren't available that morning, (scarcely surprising given the lack of advance notice as counsel, and, subsequently, the solicitor, acknowledged). Accordingly, counsel was unattended with no one en route.

5. Counsel understood the defendant himself planned to attend and noted that he had self-represented previously. However, he reiterated that, unattended and thus not properly instructed, he could not make any submissions. He asked how the Court wished to deal with it, helpfully offering to call his solicitor again to communicate the Court's view while reiterating that it was inappropriate that he should run an application absent a solicitor, client or any proper instruction.

6. I thanked counsel for bringing the matter to my attention and acknowledged that the problem was not of his making. I noted that the matter had been specially fixed and asked whether he would feel comfortable proceeding if so instructed by his client in absentia and if the Court was to grant leave to allow him to make submissions while unattended. He confirmed that he would be reluctant to do so.

7. Counsel for the applicant noted that it was a matter for the defendant's counsel and for the Court as to whether he could proceed without his solicitor and whether he was comfortable doing so. The applicant's concern was that the matter needed to proceed. She noted the history of the defendant

> *"arranging legal representation and not arranging legal representation, seeking time because he needed to find solicitors, not having solicitors by the next day, dismissing solicitors and needing more time and so on. So much so that our application has become quite urgent".*

In short, the defendant wished to proceed one way or another - the way the hearing proceeded was a matter for the Court and for the defendant's counsel *"in his difficult position".*

8. I rose to allow the defendant's counsel to take instructions, noting that the hearing was proceeding one way or another. When the hearing resumed, the defendant's counsel confirmed that having checked his Code of Conduct and having spoken to a member of the Bar's Professional Practices Committee, he confirmed that (save for an adjournment application) he could not appear on a contested matter absent attendance by an instructing solicitor. He had spoken again to his solicitor, but the latter had made no progress in arranging attendance and that was unlikely to change in the next hour. He appreciated that the defendant wanted to proceed. He understood from his solicitor that the defendant was en route. He formally applied to adjourn, while acknowledging that the matter was specially fixed. I declined to adjourn the matter in the circumstances.

9. While making clear that he would of course comply with any direction, the applicant's counsel reiterated that it was inappropriate for him to make submissions without an instructing solicitor (or his client) present. He offered to hand in the legal submissions he had prepared but the applicant understandably objected to his doing so since the defendant had failed to comply with directions for the exchange of such submissions. I did not accept the delivery of written submissions at that stage but did allow counsel to briefly identify the point that he would have been taking if he had been attended upon. He had envisaged making submissions to the effect that, because the Property was unregistered land, the applicant must prove the chain of title on the transfer of both security and the debt; there were transfers from ACC Bank to ACC Loan Management, from ACC Loan Management to Rabobank, then Rabobank to Pepper and then Pepper to Everyday Finance, and authorities such as *Pepper Finance Corporation [Ireland] Designated Activity Company v. O'Reilly* [2026] IEHC 16 *(O'Reilly)* and *Pepper Finance Corporation [Ireland] Designated Activity Company v. Moynihan* [2025] IEHC 577 *(Moynihan)* show that the applicant must prove each element of the transfer. He considered that certain documents in the chain were missing, so the applicant was not entitled to execute the order.

10. I confirmed that I would not ask counsel to break the rules of the Bar - the rules were there for good reason. I noted that the defendant was en route. However, he was on notice of the start time and the hearing had already been delayed. Accordingly, I directed that the hearing would proceed, permitting the defendant's counsel to withdraw in the absence of an attending solicitor.

11. The applicant's counsel commenced her submissions but at approximately 12pm, the defendant's counsel returned to indicate that he was finally attended by an agent instructed by his solicitor. In fairness, no criticism attaches to counsel or to the agent whose firm was only contacted after 10am that morning and who were not able to immediately attend for the day. However, in view of the seriousness of the matter, the agent's Managing Partner made himself available until 1pm following which other arrangements were made. Counsel acknowledged that the application had been opened by the applicant and said that he would make brief replies and *"deal with it as it goes"*. He acknowledged his personal embarrassment (although the situation was not, in fairness, of his making) and apologised but submitted that the appropriate course was that he attend and deal with the application as it went on. I thanked counsel and welcomed his return to the fray, requesting a letter of explanation from his instructing solicitor within 14 days. That letter, delivered on 5 May 2026 (six weeks later), addressed some of my concerns. The letter *"wholly and unreservedly"* apologised for the non-attendance, explaining that he delayed instructing agents as there was a chance he might be able to attend himself, depending on local Circuit Court listings and he only contacted the agents on the morning of the hearing by which stage it was too late for them to attend for the day. He then unsuccessfully explored other options and was eventually facilitated by a colleague in another firm who agreed to attend from 2pm and his agents agreed to attend on counsel until from around 12pm until 1pm. The solicitor emphasised that he meant no insult or discourtesy and confirmed his appreciation of his responsibilities as an officer of the Court, including the duty to ensure counsel is attended at hearing. I welcomed counsel's confirmation that he was finally attended upon, I asked whether he wished the Court to *"start over"* and he made clear that he did not. The hearing resumed and proceeded without further interruption.

Issue One - the Entitlement to enforce the Order

12. Two affidavits were sworn by the applicant's representatives (the Grounding Affidavit and the Replying Affidavit) and one by the defendant. Service was undisputed. Paras 8 – 16 of the Grounding Affidavit set out the factual background; (a) confirming the details of the loans and associated security; (b) exhibiting relevant documents including letters of sanction and the deed of mortgage; (c) recording the defendant's default on his obligations in 2009, leading to the 2014 Order.

13. Para. 3 of the Grounding Affidavit averred that the applicant is the successor-in-title to the named plaintiff *"which was later known as ACC Loan Management DAC, ("the Bank")"* having acquired its interest in the defendant's loans and associated security on or about 6 February 2025 following a transfer from Pepper Finance Corporation (Ireland) DAC

("Pepper") of the Bank’s rights, title and interest therein, *“Pepper having acquired such interest from the Bank on or about 23 August 2019”.*

14. The applicant’s claim to be the successor in title is premised on its contention that ACC Loan Management DAC (“ACCLM”) and ACC Bank PLC, in whose name the proceedings were instituted and which secured the 2014 order, are the same entity (i.e. the Bank) and its interest in the loans and mortgages transferred first to Rabobank and then to Pepper (on 30 January and 23 August 2019 respectively), and then to the applicant on 18 December 2025. Accordingly, whether ACC Bank plc and to ACC LM are or were independent entities or, as the applicant claims, a single entity whose name changed, matters because the applicant’s alleged title derives commenced with a transfer by ACCLM, whereas the loan and mortgage documents and the 2014 Order all referenced ACC Bank plc as the lender.

15. Para. 3 of the Grounding Affidavit averred that the plaintiff (i.e. ACC Bank plc) was *“later known as ACC Loan Management DAC”.* Para. 46 provides further detail, confirming that:

> *“On or about 18 June 2014, the Bank applied to the Companies Registration Office to convert from a public limited company to a private company limited by shares and a Certificate of Incorporation on re-registration duly issued on 27 June 2014. On the same day, the Bank changed its name from ACC Bank Ltd to ACC Loan Management Ltd. Thereafter, on 23 August 2016, the Bank converted to a Designated Activity Company known as ACC Loan Management DAC”.*

16. On 9 December 2016, Kelly P made an order on consent, directing that

> *"all future proceedings be carried out on between ACC Loan Management Designated Activity Company as plaintiff and Niall Quinn as defendant-this order to be lodged with the proper officer of the central office of the High Court."*

The 2016 Order was evidently intended to ensure that the plaintiff could continue the proceedings in its new name (i.e. enforce the 2014 Order) following its re-registration and conversion to a DAC. The Replying Affidavit noted that the title of the proceedings was not contemporaneously updated in the Central Office to reflect the 2016 Order due to the plaintiff’s oversight (since remedied) in not taking up and lodging a copy of the Order with the Central Office. The defendant's affidavit referenced this issue without disputing the narrative.

17. The applicant submitted, correctly in my view, that the plaintiff's change in name and in corporate structure did not affect its entitlements in respect of the Order for Possession (or, consequently, the applicant's entitlements, if any, as successor in title). It cited the dismissal of an identical argument - also concerning ACC – *In Re Bankruptcy Summons By ACC Loan Management Ltd* [2015] IEHC 96. In that case a debtor challenged a bankruptcy summons because the statutory demand and summons were brought in ACC Bank Plc's name, but the petition was in ACCLM's name. Costello J (as she then was) described the submission as *"ill founded"* at paras 9 – 10 of her judgment, noting that section 23(4) of the Companies Act 1963 provided, inter alia, that a company's change of name under that section should not affect its rights or obligations, or render defective legal proceedings by or against it, and any legal proceedings which might have been continued by its former name might be continued under its new name, observing that:

> *"This governs the change of name from ACC Bank Plc to ACC Loan Management Ltd. The change of status from a plc to a limited liability company can have no bearing whatsoever on the capacity of the creditor to collect debts due to it.'*

The applicant noted that although section 23(4) had been replaced, its successor, section 30(6) of the Companies Act 2014, was in identical terms.

18. Although the defendant's replying affidavit had not taken the point, his counsel submitted that: (a) in the absence of a deed of conveyance there was no evidence of a transfer between ACC Bank plc and ACCLM; (b) a corporate name change does not of itself convey the legal estate in land (citing *Moynihan*). He identified perceived inconsistencies between the narrative in the grounding affidavit and the recitals to the deed of transfer to Pepper.

19. I disagree with the defendant's submission, relying on the analysis of Costello J cited above. *Moynihan* does not assist the defendant. In that case (as in this), the mortgagee's name changed, whereas the legal entity did not. Bradley J accepted at para. 55 of his judgment that the original mortgagee, GE Capital Woodchester Home Loans Ltd changed to Pepper Finance Corporation (Ireland) Ltd and became a designated activity company. There was no deed of transfer between GE Capital and its new incarnation, Pepper. Nor do I understand the basis for expecting such a deed here. Nor does anything turn on the recitals to the deed on the subsequent transfer. The recitals as to historic title may have been abbreviated in circumstances in which they were deemed uncontroversial by the parties to the deed. Crucially, the applicant has averred on unchallenged affidavit as to the plaintiff's history, confirming that a single entity was renamed. The evidence satisfies me that ACCLM is the same entity as ACC Bank plc.

20. For completeness, I note that the defendant's submissions on this point are difficult to reconcile with the terms of the 2016 Order, to which he consented, which he did not appeal and which he actually cites in his affidavit. However, that point was not raised in submissions, so I have disregarded it.

21. Returning to the applicant's claim to be entitled to the benefit of the 2014 Order, paras 18 - 30 of the Grounding Affidavit particularise a series of transfers of ACC's interests. The Applicant claims that the three transactions ultimately vested the Bank's interest in it. Para. 18 dealt with the first transfer, noting that, by a Deed of Conveyance and Assignment dated 30 January 2019 (which was duly exhibited), ACCLM irrevocably assigned and transferred to Rabobank its *"right, title, and interest in inter alia the First and Second Loan Facilities, the Current Account, and the Deed of Mortgage dated 18 December 2005"* appertaining to the Property. As appears from that Deed, the Seller was ACCLM, Rabobank was the Buyer and it provided as follows:

a. Recital A referenced the mortgages set out in the schedule to the deed, noting that the charged Properties were mortgaged in the Seller's favour as security for the performance of the mortgagors' obligations.

b. Clause 1 of the operative provisions confirmed the agreement:

> *"in pursuance of the mortgage sale deed and in consideration of the sum expressed therein, the receipt of which is hereby acknowledged, the seller as legal and beneficial owner hereby grants, conveys, assigns transfers and assures to the buyer:*
>
> > *1.1 so much of the Properties as are freehold tenure TO HOLD the same unto the Buyer in fee simple free from encumbrances but subject to the proviso for redemption as contained in the mortgages;*
> > *1.2 so much of the Properties as are leasehold tenure TO HOLD the same unto the Buyer for the unexpired residue of the terms…*
> > *1.3, All estate, right, title and interest of the Seller in the reversion expectant on the determination of the Mortgages Terms in respect of the Properties, whatsoever, howsoever arising TO HOLD the same on to the Buyer, subject to the proviso for redemption as contained in the mortgages, together with all rights, entitlements, interests of the Seller in the Mortgages to hold on to the Buyer absolutely."*

c. The redacted schedule included the Property, setting out its address and the customer number.

22. The Grounding Affidavit also exhibited a Deed of Conveyance and Assignment evidencing the second loan sale, Rabobank's transfer to Pepper averring that Rabobank thereby:

> *"irrevocably assigned and transferred to Pepper all of its right, title, and interest in inter alia the First and Second Loan Facilities, the Current Account, and the Deed of Mortgage dated 18 December 2005 appertaining to the Dublin Premises"*

23. The exhibited Deed was similar to its predecessor on the first transfer, using much the same wording, and again encompassing the defendant's loans and mortgage, with additional recitals dealing, inter alia, with ACC's name change and its transfer to Rabobank. The applicant exhibited *"goodbye*" and *"hello"* letters sent to the defendant– the defendant did not deny receiving them.

24. Turning to the last of the three transfers, as noted above, para. 3 of the Grounding Affidavit stated that the Applicant acquired the Bank's interest in the Defendant's loans and the associated security on or about 6 February 2025 by virtue of Pepper's transfer to it of the Bank's rights, title and interest therein. Paras 25 - 30 of the Grounding Affidavit exhibited a redacted deed, described as a *"Global Deed of Transfer"* dated 6 February 2025 between Pepper as Transferor and the Applicant as Transferee, under which Pepper *"unconditionally, irrevocably and absolutely granted, assigned and transferred to the Applicant all of its right, title and interest in inter alia the First and Second Loan Facilities, the Current Account, and the Deed of Mortgage dated 18 December 2005 appertaining to the Dublin Premises"* and its terms appeared to encompass both the loan facilities and the associated security. The affidavit explained the basis for the redactions (commercial sensitivity, bank and/or client confidentiality (including data protection restrictions concerning information relating to other borrowers and irrelevance); the defendant's affidavit did not contest the redactions. The Grounding Affidavit also exhibited three letters from the applicant to the defendant dated 20 February 2025, informing him that his two loans, current account and the associated security had transferred to the applicant. The applicant's affidavit did not deny receiving such correspondence nor does he appear to have responded to or challenged the correspondence.

25. Accordingly, on the basis of virtually unchallenged affidavit and documentary evidence, the applicant averred that the Bank's interest in the Loan Facilities and the Mortgage had transferred to it. I say *"virtually unchallenged"* because the defendant did serve a cryptically worded replying affidavit, although it did not specifically, clearly or meaningfully engage with the plaintiff's case. The key paragraphs were as follows:

> *"3. I am making this affidavit in response to the Affidavits of Anna Barton and I do propose to reply to each averment contained in the plaintiff's affidavit, this should not be taken as an admission of the contents of same.*
> *4. … there has been no compliance with the High Court Order made herein on the 9th December 2016 by the President Peter Kelly directing that all future proceedings be carried on between ACC Loan Management DAC as Plaintiff and Niall Quinn Defendant.*
> *5. … the application in the Application in the Notice of Motion issued herein are not on title and are therefore estopped from making any applications in terms of their notice of motion.*
> *6. I say and believe that in the circumstances as outlined above I pray this Honourable Court to Refuse the Applicants motion."(sic)*

Submissions as to the Applicant's entitlement to enforce the 2014 Order

26. The defendant primarily relied on authorities in cases brought by lenders and receivers seeking summary possession, typically following loan sales and establishing that to secure such orders summarily the claimant must prove, inter alia, ownership of title to both the security and debt. He focussed on cases where the failure to adduce documents showing the chain of title, or as production of excessively redacted documents resulted in such applications being sent to plenary hearing. The applicant argued that the order for possession had been duly made and did not need to be re-litigated.

27. The parties did not identify any authority specifically on point as to the proofs required by a successor in title following a loan sale to demonstrate that he was entitled to enforce an existing order for possession. I consider that the courts have finally determined issues up to and including the making of the 2014 Order including the existence of the debt and the charge, the default and the entitlement to possession and there can be no attempt to re-litigate those issues. On the other hand, the applicant must justify its entitlement to step into the plaintiff's shoes and enforce the 2014 Order.

28. The defendant denied that the applicant had established such an entitlement to enforce the order, submitting that; (a) because the land was unregistered, the plaintiff must prove the chain of title in relation to security *and* debt; (b) this entailed proving four transfers of loan and debt from ACC Bank to ACCLM (dealt with above), ACCLM to Rabobank, Rabobank to Pepper and Pepper to Everyday Finance; (c) authorities including *O'Reilly* and *Moynihan* confirm that the plaintiff must prove each element of each transfer (i.e. the transfer of both security and debt) (d) key documents were missing, namely evidence of: (i) notification to the defendant by the assignor of all three transfers, (ii) the transfer of the loans (as opposed to the security) to Rabobank and to Pepper; and (iii) the transfer of the security (as opposed to the loans) to the Applicant; (e) documents exhibited were redacted or referred to other "foundational" documents which had not been exhibited, citing *O'Reilly* as authority for the proposition that the Court cannot safely interpret the legal effect of exhibited documents which must be read in conjunction with (unexhibited) foundational documents; (f) the plaintiff had not met the requirements of proving legal assignments in accordance with s28(6) of the 1877 Act which provides

> *"Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, lie shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees."*

29. Accordingly, the applicant had not proved its entitlement to execute as the plaintiff's successor in title. In particular, while the defendant's submissions acknowledged that the deed exhibited by the applicant in respect of the transfer to Rabobank did, on its face, convey and assign ACCLM's unregistered property interest, thus addressing the property/mortgage strand of the requirement to prove title, what the defendant described as the *"first link"* of the applicant's title was not established as the exhibits: (a) did not contain any instrument assigning the debt to Rabobank; (b) referred to a Mortgage Sale Deed which had not been exhibited. It took the same points in respect of the transfer to Pepper and the converse point on the final transfer to the applicant, submitting – the evidence only established the transfer of the security, not the transfer of the debt, so the applicant had not proved its entitlement to execute.

30. The applicant submitted that; (a) the defendant was on notice of the application (since October 2025); (b) although a litigant in person at some stages he was represented at others, including in the lead up to the hearing, his replying affidavit did not deny receiving notification the transfers to Pepper and the applicant (or indeed of the original transfer to Rabobank); (c) although his affidavit referenced the 2016 Order, that order was made on consent and there had been no appeal; (d) the order for possession had already been secured and the then chargeholder had established his entitlement at the four day High Court hearing in 2014. That issue was finally determined on the dismissal of the defendant's appeal by the Court of Appeal and the Supreme Court's refusal of leave to appeal; (e) in making the order, the Court had confirmed that: (i) the proofs were in order; (ii) the debt was due; (iii) it was secured by the mortgage; (iv) the mortgagees' rights had become exercisable; and (v) the mortgagee was entitled to possession; (f) the plaintiff was not required to repeat all proofs demanded of ACC when it secured the order in 2014. It simply needed, to prove that the benefit of the mortgage now vested in it - the mortgagee was entitled to possession and it is now the mortgagee as a matter of title; (g) in any event, the evidence establishes on the balance of probabilities that the applicant owns both debt and security; (h) the respondent has not denied the applicant's title on affidavit; (i) while it related to registered land, the decision of the Court of Appeal in *Tanager v Kane* [2019] 1 IR 385 confirms that litigants who are not a party to loan transfers lack standing to take issue with the terms of such transfers.

31. The defendant's submissions (which, as noted above, were not delivered in advance as directed) go far beyond his affidavit, for reasons which have not been explained. In the circumstances it is appropriate to examine what the defendant said (and did not say) in his affidavit. In particular, he did not join issue with the detail of the applicant's evidence. He did not dispute the debt, the security, the default or the validity of the 2014 Order, nor in my view could he have done so in view of the High Court judgment, the Court of Appeal's dismissal of his appeal and the Supreme Court's refusal of leave to appeal. Nor, save for general statements examined below, did he assert any factual or legal defence or respond to the specific averments on the applicant's behalf as to, inter alia; (a) the change of name; (b) the successive transfers of the plaintiff's interest, or the validity of those transactions; (c) his receipt of correspondence referenced in the applicant's affidavits including notification of the three transfers; (d) the entitlement of the plaintiff and its predecessors to enforce the order; (e) the history of the litigation; or (f) the reasons for the delay in enforcing the order.

32. The following points do arise from the defendant's affidavit:

a. para. 3 stated that defendant's decision not to reply to each averment in the plaintiff's affidavit should not be taken as an admission of any point. It has become standard for affidavits to feature such language. Such averments are appropriate but their import is confined. Where, for example, a party has sufficiently made its case in respect of the issues presently before the court or sees no need to reply to averments for the purposes of a particular application, it should confine affidavits as much as possible. For example, it should avoid repeating points already made and resist the temptation of engaging on issues which are not germane to the immediate issue. Typically such an averment notes that the deponent is not admitting points not addressed. The legal effect is to avoid being accused of having admitted points not dealt with. Such an averment does not put the other party to proof. If a party has adduced credible, prima facie, evidence on any relevant point, then, absent countervailing evidence, the court may proceed on foot of the unchallenged. A *"non-admission"* such as para. 3 does not inhibit the court's entitlement to have regard to the applicant's evidence; credible prima facie evidence of relevant issues will generally be accepted in the absence of countervailing evidence which goes beyond *"mere assertion".* Accordingly, para. 3 does not advance matters.

b. Para. 4 of the affidavit averred non-compliance with the 2016 Order (which directed that future proceedings be carried on between ACCLM as plaintiff and defendant). Paras 39 to 41 of the written submissions (which were eventually produced during the resumed hearing despite not having been served as directed), enlarged on that averment, suggesting that unless that order was

> *"formally appealed or vacated, the applicant is estopped from seeking unilateral substitution as plaintiff as if the 2016 order did not exist. The applicant's predecessor consented to, and obtained, that order for the specific purpose of defining the title of the parties to the proceedings. The applicant and its predecessors are bound by it."*

Paras 25 – 32 of the applicant's submissions dealt with the change of name and the 2016 Order, noting that the order was made in the course of the appeal which was later struck out and that it was granted (on consent) in favour of the plaintiff on foot of its own motion (following the plaintiff's conversion from a public limited company to a private company limited by shares and its change of name and subsequent conversion to a Designated Activity Company known as ACC Loan Management DAC) to ensure that the plaintiff could continue the proceedings in its new name following its re-registration and conversion to a DAC. It submitted that the plaintiff's change of name and corporate structure could not affect its entitlements in respect of the Order for Possession, nor those of the Applicant as its successor in title.

c. The objection articulated in para. 4 of the defendant's affidavit seems to assume that the present application conflicts with the 2016 Order. I consider any such submission misconceived. The order reflected the change of name. By definition, it was an interlocutory rather than a final order and did not preclude further orders or applications. In any event a failure to comply with the 2016 Order would not of itself offer a substantive defence to the current application.

d. The remaining factual averment was para. 5, which cryptically and baldly testified as to the deponent's belief that the Applicant was *"not on title"* and was therefore *"estopped from making any applications in terms of their notice of motion"*. It is hard to marry these assertions to the submissions on the defendant's behalf at the hearing. The defendant does not:

   i. deny the existence of the loans or mortgages
   ii. deny the making of the 2014 and 2016 Orders,
   iii. deny the Grounding Affidavit's averment that the debt remains outstanding and now approximates or exceeds €3 million – there is no suggestion of any attempt to reduce the debt.
   iv. Object to the redactions on documents exhibited by the applicant or suggest that he was prejudiced thereby.
   v. Take issue with any of transfers on any specific grounds; if para. 5 is intended to do so, then it is no more than a mere assertion, not suggesting any basis for objecting to the transfers. He does not, for example, refute the specific averments on the applicant's behalf, nor does he deny receiving notification of the various transfers (as required to complete a legal assignment) or suggest that he disputes the validity

of any of the three transfers (or, if so, the grounds of any such objection). Nor does he could raise any concerns with regard to the documentation placed before the court. For example, he does not complain about the applicant's failure to exhibit mortgage sale deeds which are referred to in the first two transfers.

33. Such omissions from the defendant's affidavit are hard to reconcile with submissions subsequently advanced at the (resumed) hearing. If such points had been raised on affidavit, they would doubtless have provoked answering affidavits, perhaps exhibiting documentation such as the mortgage sale deeds and further hello and goodbye letters and the issues would also have been addressed in detail in the applicant's submissions. Instead, a fusillade of issues were ventilated for the first time at the hearing, without being anchored on affidavit. The defendant seems to have approached the hearing on this basis - his solicitor's 5 May letter 2026 volunteers that he originally envisaged arranging for an agent to attend the hearing rather than doing so himself because the defence *"focussed on legal submissions rather than any longstanding knowledge of the file"* and *"the matter before the Court was principally of a technical nature and significantly dependent on legal submission by Counsel"*. Since new issues emerged for the first time in oral submissions which had not been foreshadowed in the replying affidavit and given the default in complying with the direction to file written submissions before the hearing, I would have compelled in fairness to adjourn the matter (at the defendant's expense) for both parties to address such points on affidavit and to make further submissions if necessary, if I had considered that the defendant was entitled to ventilate such points and that they were likely to affect my ruling. However, as outlined below, I do not consider that it was necessary to adopt that course.

34. In terms of the proofs, I consider that the *plaintiff's* entitlement to the order for possession has been determined. The applicant need not relitigate that issue or address proofs established to secure the 2014 Order. However, leaving aside the 12 year delay, it must prove that it is the plaintiff's successor in title. There was a controversy as to whether, as would be the case in possession proceedings when a charge holder sought possession after a loan sale, the applicant needed to prove the transfer of both loan and security, or whether, once an order for possession had been granted to a mortgagor, the subsequent owner of the mortgage could enforce the order for possession, without proving ownership of the underlying debt. It seems to me that from a land law perspective the latter position may be logical. Paras 31 to 33 of the defendant's submissions noted that, whereas in theory a mortgagee enjoys a right of possession in respect of unregistered land, in most modern mortgage deeds the mortgagee's right to possession is confined to circumstances in which an event of default has occurred. He cites *Bank of Ireland v Cody & Anor* [2021] IESC 26, [2021] 2 IR 381 at para.40 of the reported judgment as authority for the proposition that a mortgage of unregistered land takes an assurance of the legal title, and that legal estate carries with it the right to possession subject to the terms of the security including an express or implied agreement that possession will not be taken if the terms of the security are met. On that basis he demands the essential proofs on an application for an order for possession. However, I consider that that Rubicon was crossed in 2014. The order for possession has been granted to the mortgagee and the applicant need only prove it is now the mortgagee. However, I need not determine that issue because, in my view, the applicant's evidence, which is unchallenged other than by mere assertion, suffices to establish on the balance of probabilities the applicant's ownership of loans and mortgage. I reach this conclusion in view of:

a. express averments in the affidavits filed on the applicant's behalf and the contents of the exhibits thereto.

b. The absence of any evidential challenge to the applicant's assertion of title except by mere assertion.

c. The terms of the 2016 order which confirm my conclusion that the applicant can seek to enforce the 2014 order based on transfers derived from ACCLM.

d. The sale of the Athlone property in August 2023, confirming the eventual compliance with the 2014 order notwithstanding the first two loan transfers.

e. The fact that, by order dated 6 December 2021 in the Minnock Proceedings to which the defendant was a party as was the Bank, the applicant's immediate predecessor in title, Pepper was substituted for the Bank on foot of transfer of the security (albeit a lower standard of proof applied to that application).

f. It seems to me from the documentation exhibited by the applicant that the final transfer encompassed both debt and security and that the correspondence put the plaintiff on notice of the assignment as had the corresponding goodbye and hello letters exhibited in respect of the transfer to Pepper. In the absence of any suggestion to the contrary and on the basis of the applicant's effectively unchallenged averments and the documents exhibited, I conclude that such letters were sent on the occasion of all three transfers and that the plaintiff's debt and security (including the benefit of the 2014 Order) transferred first to Rabobank, then to Pepper and finally to the applicant.

35. The applicant's largely uncontested averments and the documents exhibited, coupled with the absence of countervailing evidence to challenge the validity of the loan transfers or to suggest the discharge of the debt supports the applicant's claim to title. It has established on the balance of probabilities that it is the successor in title to the plaintiff and that ownership of both the debt and security has passed to it, along with the entitlement to enforce the 2014 order on the same basis as the plaintiff (including the necessity for an O. 42 application). Accordingly, I conclude that the applicant is the plaintiff's successor in title and can enforce the 2014 order if it can sufficiently explain its delay and that of its predecessors and persuade the Court to exercise its discretion to grant leave.

Issue Two – Should liberty to enforce be granted?

36. The principles governing the judicial discretion in respect of such applications are well settled. O.42, r.24 provides:

> *"In the following cases, viz.:—*
>
> > *(a) where six years have elapsed since the judgment or order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;*
> >
> > *(b) where a party is entitled to execution upon a judgment of assets in futuro;*
> >
> > *(c) where a party is entitled to execution against any of the shareholders of a company upon a judgment recorded against such company, or against a public officer or other person representing such company;*
>
> *the party alleging himself to be entitled to execution may apply to the Court for leave to issue execution accordingly. The Court may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried: and in either case the Court may impose such terms as to costs or otherwise as shall be just. Provided always that in case of default of payment of any sum of money at the time appointed for payment thereof by any judgment or order made in a matrimonial cause or matter, an order of fieri facias may be issued as of course upon an affidavit of service of the judgment or order and non-payment."*

37. As the applicant noted, authorities such as *Smyth & Another v Tunney & Others* [2004] IESC 24 *(Tunney)* confirm that applicants need not establish unusual, exceptional or very special reasons for the delay. In *Tunney,* Geoghagan J concluded that the emphasis on such applications (when on notice) was *"essentially on prejudice to the defendant though obviously some reason must be given by the applicant".* Although the applicants had not proved that they could not have executed the judgment debt within the six-year period, the Court accepted that they had

> *"nevertheless shown sufficient reasons why they allowed a lapse of time and should still be allowed to execute if they can. Essentially, the conduct of the appellants heavily contributed to the delay in execution".*

38. Both parties cited *Carlisle Mortgages v Sinnott* [2021] IEHC 288 *(Carlisle)* and *Cabot Financial (Ireland) Ltd v Joyce* [2023] IECA 281 *(Cabot).* The defendant noted that in *Carlisle*, while noting that the categories were not closed, Simons J listed three established categories where leave to execute had been granted; (i) delay due to the indebted party; (ii) change in the indebted party's financial circumstances; (iii) where execution was deferred pending the parties' attempts to agree alternative repayment arrangements. He identified a further category where the delay was attributable to circumstances outside the applicant's control. The applicant submitted that Simons J noted that, absent prejudice to the indebted party, leave should not normally be refused absent culpable delay by the applicant, a comment endorsed in *Cabot.* The defendant added that the decision confirmed that the exercise of the Court's discretion requires an assessment of both parties' interests.

39. The applicant cited the observation of Butler J in the Court of Appeal at para.68 of her dissenting judgment in *Cabot*, that the mere fact of the enforcement of a debt which would not otherwise be paid is not of itself prejudice (citing *Tunney*). Accordingly a debtor's failure to pay a judgment debt over a long period cannot constitute prejudice which should prevent execution of a judgment. Writing for the Court in *Cabot*, Donnelly J noted public policy reasons for not penalising creditors who engage in discussions, observing at para. 90 that while the rule requiring that an application to Court after six years protects judgment debtors, the fact that creditors may seek leave also protects the public interest in encouraging engagement *"once forbearance to execute is adequately explained on affidavit."* While not disputing this analysis, the defendant also relied on *Cabot* as confirming an assignee's responsibility for delay attributable to its predecessors.

40. Applying those principles, it will be noted that the length of the delay here is at the end of the spectrum, nearly 12 years (although the trigger may be the expiry of the stay or the final determination of the appeal). The Grounding Affidavit confirmed the following events following the 2014 Order:

a. on 5 June 2014, the defendant appealed the 2014 Order to the Court of Appeal but took no steps to progress the appeal.

b. On or about 18 June 2014, the plaintiff applied to convert from a public limited company to a private company limited by shares, changing its name to ACC Loan Management Ltd and on 23 August 2016 it converted to a Designated Activity Company, ACC Loan Management DAC.

c. By Notice of Motion dated 19 October 2016, the Bank sought directions because the Defendant had taken no steps to progress the Appeal and also issued a motion directing that the appeal and proceedings be pursued by the Bank under its new title *"ACC Loan Management DAC"*.

d. On 9 December 2016, Kelly P directed that all future proceedings be carried on between ACC Loan Management DAC as plaintiff and Niall Quinn as defendant. At that hearing, the defendant (through his then solicitors) indicated that he intended to issue a motion seeking liberty to adduce new evidence on the appeal. The Court made directions in respect of the issuing of any such motion and the exchange of affidavits, directing the defendant to issue any such motion before the end of December 2016. The defendant did not do so and on 27 January 2017 the Court allowed him a further two weeks. On 10 February 2017, the defendant issued this Motion.

e. On 24 February 2017 the defendant sought further time to deliver an affidavit and submissions. The Court gave directions, adjourning the matter to 24 March 2017 on which date the Court made further directions for the exchange of affidavits and submissions, adjourning the application to 29 June 2017 to secure a hearing date for the motion to adduce new evidence and for the substantive hearing.

f. The defendant again failed to comply with the directions and the Bank listed the matter for mention. The Court made further directions and the motion to adduce new evidence was listed for hearing on 20 December 2017 on which date it was heard and refused.

g. On 16 March 2018, the appeal against the 2014 Order was listed for mention in the Court of Appeal. Irvine J (as she then was) directed the defendant to deliver submissions within six weeks and the Bank to deliver its submissions within six weeks thereafter. The Appeal was listed for hearing on 4 October 2018.

h. The defendant failed to deliver its submissions and the Bank re-listed the matter before the Court of Appeal on 7 June 2018. Irvine J ordered the Appeal to be struck-out unless the defendant delivered his submissions within a further six weeks.

i. By Notice of Discharge the defendant’s then solicitors were discharged. He continued as a litigant in person.

j. The Appeal was struck out as the defendant failed to deliver submissions.

k. On 15 November 2018, the defendant's estranged wife, Kathy Minnock, issued High Court proceedings against the Bank, a receiver it had appointed and the defendant seeking injunctive and declaratory relief in respect of the Property but the proceedings were never served on the Bank or the receiver**.** On 19 November 2018, she registered a *lis pendens* over the Property, again without ever serving the Bank.

l. On 21 November 2018, the defendant applied for leave to appeal to the Supreme Court but on 9 April 2019, the Supreme Court refused such leave.

m. On 12 February 2019, Byrne Wallace LLP entered an appearance on behalf of the Bank and the Receiver in the Minnock Proceedings so as to take up a copy of the (still unserved) proceedings.

n. Loan sales from ACC to Rabobank and from Rabobank to Pepper took place in January and August 2019.

o. By letter dated the 1 April 2019 the Bank and the Receiver consented to the late delivery of a Statement of Claim in the Minnock proceedings.

p. The Minnock proceedings lay dormant due to the Covid-19 pandemic through 2020 and early 2021.

q. By order dated 6 December 2021, Pepper was substituted as a defendant in the Minnock Proceedings in place of the Bank on foot of the loan sale and the transfer of the related security.

r. On 17 January 2022 the plaintiff further extended time for the delivery of the Statement of Claim in the Minnock proceedings; it was still not forthcoming.

s. Between 25 February and 4 July 2022 Pepper unsuccessfully attempted to negotiate a settlement with Kathy Minnock and the defendant.

t. By letters dated 13 and 26 July 2022 the Plaintiff again extended time for delivery of the Statement of Claim.

u. On 31 January 2023, Pepper and the Receiver issued a Motion seeking to strike out the Minnock Proceedings for delay and/ or for want of prosecution and to vacate the *lis pendens.*

v. By order dated 28 June 2023, O' Moore J dismissed the Minnock Proceedings and vacated the *lis pendens.*

w. There were further unsuccessful attempts to engage with the defendant in late 2023 and early 2024.

x. On 29 July 2024, Pepper issued a motion under O.42, r.24 seeking liberty to issue execution of the 2014 Order in light of the loan transfer to it. The motion was given a return date of 11 November 2024 but the defendant did not appear on that date, so the matter was adjourned to 16 December 2024.

y. On 16 December 2024 the defendant secured an adjournment to 10 February 2025 to seek legal advice.

z. On 10 February 2025, Mr Quinn secured a further adjournment to 3 March 2025, indicating that his estranged wife's solicitor was to come on record for him and that he had an affidavit ready to file.

aa. On 3 March 2025, no solicitor had come on record but the defendant had issued his own motion of (which had not been served) seeking to strike out Pepper's motion. Amongst the defendant’s objections was that his claim that Pepper could not seek to issue execution without first being substituted as plaintiff. The Court adjourned both motions to 31 March 2025 to allow the defendant's motion to be served and to allow Pepper to issue a substitution motion if it wished to do so, returnable to 31 March 2025.

bb. On 31 March 2025, the Court struck out both motions on Pepper’s with no order as to costs as the loan had been sold to the applicant.

41. The grounding affidavit further averred that: (a) the 2014 Order was by then over 11 years old; (b) the applicant would be seriously prejudiced in its attempts to recover the substantial debt secured by the mortgage unless it could proceed with the application and unless it could enforce the Order; (c) as at the date of swearing, the defendant owed €2,917,829.30 and no attempts had been made to discharge or reduce that debt; (d) while a substantial period had passed since the 2014 Order, that delay was largely due to the actions and inactions of the defendant and/or of Ms Minnock in the manner in which they had issued appeals and fresh proceedings without progressing such appeals and/or proceedings.

42. The defendant's affidavit did not take issue with: (a) the applicant's account of events since the 2014 Order; (b) the attribution of responsibility for the delay; (c) the applicant's evidence as to potential prejudice if it was not permitted to enforce the order. Nor did it suggest that the relief sought would be unfair or prejudicial (save for it opposing such reliefs on the basis of the generalised averments identified above).

43. The applicant submitted that: (a) under O.42, r.24 the applicant need only show some explanation for the delay in execution; (b) the Grounding Affidavit detailed the actions, appeals, proceedings and procedural delays on the part of the defendant and his estranged wife (who is not a party to these proceedings) which caused the vast majority of the delay; (c) most of the delay had been caused by the defendant; (d) there was some delay due to circumstances outside the control of the applicant and its predecessors (including the Covid-19 restrictions due) and a small delay attributable to attempts to resolve the dispute; (e) while the loan sale to the applicant also delayed matters by a few months that delay was not based on culpable behaviour; (f) there is no prejudice to the defendant - rather he has had the benefit and use of the Property for an additional decade; (h) the applicant would be greatly prejudiced if leave to issue execution were refused as the 2014 Order relates to a valuable mortgaged property which is security for a debt of circa €3,000,000.00; (i) the defendant had the benefit of a stay until

September 2014. Since then, all his defences and appeals failed but he has nevertheless relied on them for over a decade to resist the execution of the 2014 Order. In summary, the applicant submitted that it had established good reasons for why the Order was not executed previously, circumstances outside the control of the applicant or its predecessors such as the litigation and the appeals engaged in by the defendant and his wife, engagement in attempts to resolve the dispute; and, to a lesser extent, the loan sale to the applicant.

44. Although his affidavit had not taken any issue as to delay or prejudice, the defendant submitted that: (a) the Court should exercise its discretion to refuse the application on due to the delay by the applicant and its predecessors and due to prejudice to the defendant; (b) there had been virtually 12 years delay, which the applicant largely attributed to the defendant and his estranged wife but its own evidence confirms that its predecessors accommodated and compounded such delay by consenting to extensions for the defendant's estranged wife to deliver her statement of claim (rather than adopting a position of neutrality) and permitted those proceedings to lie dormant for over four years until applying to substitute Pepper for the Bank in January 2023; (c) furthermore, the applicant was a defendant in those proceedings, so it was inappropriate to blame him for delay caused by proceedings brought by his estranged wife; (d) the principle that passage of time cannot constitute prejudice to a debtor who had use of the property does not apply because the prejudice did not arise from the passage of time alone, but also from detrimental reliance induced by the creditor's conduct, repeated accommodation of the Minnock proceedings and repeated extensions; (e) the Court had to consider that it may have been easier for a younger man to reaccommodate himself following enforcement of the order than it would be for the defendant at this stage; (f) this was an egregious example of delay with a last minute application, placing a heavy onus on the creditor, which has blamed other parties when actually each of the loan sales caused delay, and the 11th hour application was prejudicial.

45. It is significant that the defendant's affidavit did not take issue with: (a) the applicant's account of developments since the 2014 Order; (b) the applicant's attribution of responsibility for the delay; (c) the applicant's evidence as to the potential prejudice if it was not permitted to enforce the order. Nor did it suggest that the granting of the relief sought would be unfair or prejudicial to the defendant (although it opposed such reliefs on the basis of the generalised averments identified above).

46. Having reflected on all the foregoing points, I consider that I should exercise my discretion to permit enforcement. Failure to do so would be prejudicial to the applicant without any evidence of prejudice to the defendant, save for the point raised by his counsel that his giving up the property and finding alternative accommodation will undoubtedly be more challenging given his current age than it would have been if the order had been enforced when it was made. However, that situation is largely of the defendant's own making and is offset by his occupation of the property for more than a decade, notwithstanding the terms of the 2014 order, so the balance of prejudice rests firmly on the applicant's side of the scales. The delay has probably benefited the defendant rather than prejudicing him.

47. The delay was very long but, based on unrefuted evidence, the applicant has sufficiently explained it as largely attributable to events outside its and its predecessor's control such as the defendant's appeal which he made no attempt to prosecute before the Court of Appeal but nevertheless sought to appeal to the Supreme Court, the pandemic and the Minnock proceedings. Although those were initiated by the defendant's estranged wife, the evidence suggested that it was the applicant's predecessors in title who were proactive in bringing them to a conclusion, even taking steps without being served. I note that, shortly after the ending of the Minnock proceedings, he informed the Court in these proceedings that he intended to retain the solicitors who represented his wife against the applicant's predecessor in title (and as against the defendant himself). While that did not happen, the ventilation of the suggestion does not seem consistent with an entirely arm's length relationship, but I need not determine that issue. Suffice to note that the defendant's affidavit is silent as to the Minnock proceedings, but that even if he played no role in instigating them, he appears to have benefitted from the delay caused thereby and there is no evidence of any discontent on his part in that respect. Accordingly, I accepted that the defendant benefitted from the delay caused by the Minnock proceedings and most of the delay was caused by his own unsuccessful appeals and by the unsuccessful Minnock proceedings, both being outside the applicant's control. I would not fault the applicant for its appropriate extensions with regard to the delivery of a Statement of Claim. Such actions were designed to progress the proceedings without troubling the Court and do not represent culpable delay. The applicant and its predecessor acted appropriately and fairly in their approach and they could have been if they had acted otherwise.

48. Although the defendant submitted that the delay in taking up the 2016 order and lodging it in the Central Office should influence the exercise of the discretion, it would be unduly harsh to punish the applicant for that oversight, which does not appear to have contributed to the overall delay or to have prejudiced the defendant. The applicant must take responsibility for delays due to ACC's corporate changes or the loan sales as being matters within its (or its predecessors') control but the evidence does not suggest that those matters made a major contribution to the overall delay or that they prejudiced the defendant.

49. As in *Tunney*, the conduct of the defendant and his estranged wife in respect of the appeal of the 2014 Order and the subsequent commencement of the Minnock proceedings contributed heavily to the aggregate delay, at least until 28 June 2023, and the unsuccessful engagement also contributed to a lesser degree, as did the pandemic. When all the different factors are considered, the applicant has shown sufficient reasons for the total lapse of time and should be allowed to execute.

Issue 3 – Must the Applicant be added as a plaintiff?

50. I am inclined to endorse the applicant's submission that it can enforce the order without becoming a party. Nevertheless, for the avoidance of doubt I will also make an order pursuant to O.17, r.4 so as to resolve that issue, adding rather than substituting the applicant as a plaintiff.

51. I propose to make orders in the terms sought in the notice of motion but will hear the parties as to the exact terms of the order and as to costs if either side wishes to contend for an order other than in accordance with the presumption that, the applicant having been wholly successful on the application, should be awarded its costs on the application. If any party wishes to make any such cost submissions they should be furnished in writing (limited to 2,000 words) and furnished within 14 days of this judgment, following which the other party will have a corresponding period within which to file any replying submissions.

Representation

Fionnuala Ní Dhúgáin, instructed by Byrne Wallace Shields LLP for the applicant

Keith Farry, instructed by Hugh J Campbell & Co Solicitors for the defendant.