**THE HIGH COURT**

**IN THE MATTER OF A MORTGAGE SUIT PURSUANT TO CONTRACT AND INDENTURE OF MORTGAGE AND IN THE MATTER OF SECTION 62(7) OF THE REGISTRATION OF TITLE ACT 1964 (AS MODIFIED BY SECTION 1 OF THE LAND AND CONVEYANCING LAW REFORM ACT 2013) AND ORDER 3 OF THE RULES OF THE SUPERIOR COURTS**

**[2026] IEHC 529**

**[Record No. 2024 79 SP]**

**BETWEEN**

**EVERYDAY FINANCE DAC T/A LINK FINANCIAL AND DECLAN TAITE**

**PLAINTIFFS**

**AND**

**PAUL O'DONOGHUE AND EDWARD O'DONOGHUE**

**DEFENDANTS**

**JUDGMENT of Ms Justice Marguerite Bolger dated the 23rd day of July 2026**

**1.** This is the plaintiffs' application by way of Special Summons dated 27 May 2024 for possession of the property at Apartment 3, The Convent, Mount St. Annes, Dublin 6 (hereinafter referred to as "the property"), of which the first defendant is registered as full owner. The plaintiffs also seek injunctive reliefs removing the defendants, their servants or agents, from the property pursuant to s. 62(7) of the Registration of Title

Act 1964 and O. 3 of the Rules of the Superior Courts. A jurisdiction issue has arisen in that there is a dispute between the parties as to whether the property is the first defendant's family home and whether, therefore, this Court lacks jurisdiction in accordance with s. 3 of the 2013 Act and the provisions of the CCMA. The first defendant also alleges that he acted under the undue influence of the second defendant, his father.

**Background**

**2.** The plaintiffs' claim arises from a loan facility advanced by IIB Homeloans Limited on 15th December 2005 to the second defendant. The plaintiffs rely upon a guarantee by the first defendant and son of the second defendant, dated 31st January 2006 and a related charge over his ownership of the property, executed on the same day. The first plaintiff says that it is the successor in title of IIB Homeloans Limited in respect of the loan facility and security instruments. The second plaintiff is a receiver appointed over the property. The Special Summons pleads that the second defendant was in unlawful occupation of the property. The plaintiffs' grounding affidavit avers that the property is not a family home (at paragraph 12), that the first defendant did not reside there and that the property "*is not the principal private residence of the first defendant within the meaning of s.3 of the Land and Conveyancing Law Reform Act 2013"* (at paragraph 13). It goes on to aver, at paragraph 48, that the property was not the first defendant's primary residence within the meaning of the Central Bank Code of Conduct on Mortgage Arrears ("CCMA") and that the Code did not apply to either defendant or to the property. It also said, at paragraph 41, that the last repayment on the mortgage was in the amount of €125 in August 2022. The Receiver's affidavit set out three occupation inspections that were conducted in

October 2022, March 2023 and November 2023 all of which confirmed that a tenant was residing in the property.

**3.** The first defendant has sworn that he resides in the property, that it is his family home and his principal private residence. The plaintiffs rely on the fact that the property was not the first defendant's principal private residence when the guarantee was entered into and highlights the absence of any evidence that the first defendant resided there before January 2024.

**Issues**

**4.** The first defendant raises jurisdictional and substantive issues in disputing the plaintiffs' entitlement to the relief sought. He does not deny that the account is in arrears but says that he was never made aware of that. He also says that, at all times, he acted under the undue influence of his father, the second defendant, who arranged for him to execute the guarantee that the plaintiffs now rely on, when he was a student living at home with and working for his father. The first defendant criticises the plaintiffs for not ensuring that he took independent legal advice before he executed the mortgage and the guarantee.

**Jurisdiction**

**5.** The first defendant contends that this Court lacks jurisdiction due to a failure to comply with (i) s. 3 of the 2013 Act and (ii) the provisions of the CCMA. The plaintiffs dispute the application of either provision to this case. I address each separately below.

**(i) Section 3 of the Land and Conveyancing Law Reform Act 2013**

Section 3 provides as follows,

"3.(1) This section applies to land which is the principal private residence of –

(a) the mortgagor of the land concerned, or

(b) a person without whose consent a conveyance of that land would be void by reason of-

(i) the Family Home Protection Act 1976, or

(ii) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

And the mortgage concerned was created prior to 1 December 2009."

**6.** The long title to the Act provides as follows**:**

> *"An Act to provide that certain statutory provisions apply to mortgages of a particular class notwithstanding the repeal and amendment of those statutory provisions by the Land and Conveyancing Law Reform Act 2009, to provide for the adjournment of legal proceedings in certain cases and to provide for related matters*."

**7.** On the basis that the first defendant has been living in the property since January 2024, some months before the within proceedings were instituted in May 2024 (which is not challenged by the plaintiffs whose last occupation inspection was in November 2022), the first defendant asserts that s. 3 applies and that the proceedings should have been brought before the Circuit Court, thereby denying this Court of jurisdiction. The plaintiffs succinctly identify the issues at para. 5 of their supplemental affidavit as follows:

> *"[W]hether a person who, long after the creation of the mortgage, unilaterally elects to take up residence in a secured property that was commercial in nature, thereby converts that property into a "principal private residence" for the purposes of section 3 of the 2013 Act, such that the High Court does not have jurisdiction to determine the matter in the first instance."*

**8.** Both parties made submissions on the statutory interpretive approach of 'words in context' as per *Heather Hill v An Bord Pleanála* [2024] 2 IR 222. The plaintiff argued in its supplemental written submissions that the Long Title evidences the intention of the Oireachtas to anchor "*the statutory regime not in an abstract description or current description or status of land simpliciter, but in the character of the mortgage itself and the class of mortgages to which the Act is intended to apply*".

**9.** I do not agree. The wording of s. 3 is not so ambiguous as to support this analysis. The Long Title identifies the legislative intent to confer jurisdiction on the Circuit Court by reference to "*the land which <u>is</u> the principal private residence*" of the mortgagor at the time the proceedings were instituted [my emphasis]. The reference therein to "*mortgages of a particular class*" confirms the legislative intent to limit the relevant statutory provision to specific mortgages, i.e. to limit the application of s. 3 to mortgages created prior to 1 December 2009. This is confirmed further, and is consistent with, the heading to s. 3: *"Proceedings relating to certain mortgages to be brought in the Circuit Court*".

**10.** Section 3(1), before addressing the specific mortgages covered by the section, sets out the Circuit Court's mandatory jurisdiction by reference to the land rather than the mortgage. The wording of s. 3(2) and s. 3(3) locate the Circuit Court's jurisdiction by reference to the land in the present tense, being land to which the section applies. The subsections do not locate jurisdiction in the mortgage or in the class thereof, as is contended for by the plaintiffs.

**11.** The plaintiffs sought to draw an analogy between the statutory protection of a mortgagor's principal private residence pursuant to s. 3 with that of a spouse residing in a family home whereby both spouses must consent to any conveyance of the family home, whether or not they are a legal owner of the property. However, a spouse's statutory protection is limited, as determined by the Supreme Court in *National Irish Bank v Graham 1994 WJSC – SC 1515* (decision of 4 May 1994) to the conveyance of a property that was a family home at the time of the conveyance and does not apply to the conveyance of a property that might become the family home of a married couple in future. The within plaintiffs in their submissions stated that the Supreme Court had rejected a liberal reading of the section of the Family Home Protection Act 1976. However, what is at issue here is not so much a liberal reading of s. 3(1) as much as a literal reading. The first defendant relies on the actual wording of s. 3 and its clear reference to the land before it refers to the class of mortgages concerned i.e. one created prior to 1 December 2009.

**12.** I note that the 2009 Act, the Land and Conveyancing Law Reform Act 2009, had created a particular class of mortgage known as "*home loan mortgage*". By contrast, the legislature declined to use that language in the 2013 Act. This supports my findings that the class of mortgages to which s. 3 was intended to apply, as specified in the section, comprised mortgages created before 1 December 2009.

**13.** The plaintiffs also relied on the decisions of the High Court in *Fennell v Creedon* [2015] IEHC 711 and *Tyrrell v Wright* [2018] IECA 295 where the High Court and the Court of Appeal declined to allow the mortgagor any benefit of the CCMA. Both courts found that the mortgagor could not usurp the underlying terms of the mortgage contract that required the mortgagee's consent to create or permit to subsist any encumbrance on or affecting any part of the mortgaged properties, by moving into the property with their family some years after they executed that contract. Both decisions are concerned with the characterisation of contracts and loans for the purposes of the application of the CCMA only and do not assist with the correct interpretation or application of s. 3(1).

**14.** The first defendant cited a later decision of the Court of Appeal at para. 12 of its submissions.

> *"In Charleton & Anor v. Coates [2021] IECA 58, the same issue as in this case was raised by the mortgagor who alleged the Plaintiff had impermissibly brought proceedings in the High Court. However, as the Plaintiffs were only receivers seeking injunctive relief against trespass and not possession, the Costello J. for the Court of Appeal held that Section 3 of the Act was not engaged. However, she reversed the trial Judge's finding that it was not his principal private residence and held (at para. 33): " At para. 39 of her judgment the trial judge held that it was not, and, in my opinion, she erred in so holding. First, this was an interlocutory application and she ought not to have made determinations which will properly be made at the hearing of the action. Secondly, there was a conflict on the evidence and she was not in a position to resolve that conflict as there was no cross-examination of the deponents. Thirdly, while Mr. Coates unilaterally altered the security for his commercial borrowings by residing in a property which was not at the time of the loan, and the granting of the security, his residence, this does not conclusively mean that the property <u>as a result cannot</u> be his principal private residence for the purposes of s. 3. As this is not a matter which requires to be determined to resolve this appeal, I shall leave the resolution of this issue to another case where a decision on the issue is required." [underline original to the judgment]."*

**15.** Whilst Costello J did not determine the issue, it is clear that she viewed it as an issue yet to be determined. It now falls to be determined by this Court. The timing of the execution of the mortgage and the guarantee is irrelevant to the application of s. 3(1). Rather it is the timing of proceedings relating to a mortgage created prior to 1 December 2009 that brings the subsection into play, requiring those proceedings to be brought in the Circuit Court where the land concerned is, at the time of the proceedings, the principal private residence of the mortgagor or the person covered by s. 3(1)(b).

**16.** Applying that to the facts in this case, I find that the property is and has been the principal private residence of the first defendant and his wife since January 2024, some four months before the within proceedings were instituted before this Court. The last inspection by or on behalf of the plaintiffs in November 2023 may well have been correct, i.e. that a tenant was in residence. However, there is no evidence to challenge the first defendant's averment that the property has been his principal private residence since January 2024, which predates when the within proceedings were instituted before this Court in May 2024.

**17.** In those circumstances, the plaintiffs were required by s. 3(1) to institute these proceedings in the Circuit Court. That statutory requirement is entirely consistent with the legislative intent that proceedings for possession of a property that was the mortgagor's principal private residence at the time of the institution of the proceedings, should be before the Circuit Court. That applies whether or not it was their principal private residence when they took out the mortgage or provided a guarantee.

**18.** This interpretation does not, as claimed by the plaintiffs, require High Court proceedings in respect of a commercial property to be forced midstream to relocate to the Circuit Court or to abandon the proceedings. This is because s. 3 applies to the court in which the proceedings are to be brought and once the proceedings are brought before the correct court, then that court has jurisdiction. Neither does this interpretation unfairly require the plaintiffs to continually track a borrower's residence. Rather, it requires the mortgagee, as per s. 3(1), to establish the status of the property in question when proceedings are being issued. This could presumably be done by the type of occupation inspection that the within plaintiffs arranged to be carried out, as long as it is done at the time of the institution of the proceedings and not months later as occurred here.

**19.** In conclusion, s. 3(1) applies where the mortgaged property is the mortgagor's principal private residence at the time of the institution of proceedings, whether or not it was their principal private residence at the time they executed the mortgage. Whether the terms of a mortgage contract could expressly oust that jurisdiction, agreed to and executed by the parties, is a point that may fall to be determined in a future case.

**20.** These proceedings were wrongly brought in this Court rather than the Circuit Court. This Court has no jurisdiction to determine the issues raised and the proceedings must, therefore, be dismissed.

**21.** I should add that since the hearing of this case, the plaintiff sought to mention the matter before me to advise of what they said was a further property check their agent had been done in June 2026 which established that a tenant was living in the property. In replying correspondence, the plaintiff confirmed this was so and that he had moved out for family reasons in May 2026. None of this was put on affidavit but even if it was, it is irrelevant given that the issue is whether the property was the mortgagor's principal private residence at the time of the institution of the proceedings. For the reasons set out above I am satisfied that it was. Any subsequent change in the occupation of the property does not alter the fact that the High Court has no jurisdiction to determine proceedings that should have been brought before the Circuit Court.

**22.** In the event that I am wrong in my conclusions on the correct interpretation of s. 3, I proceed to consider this Court's jurisdiction having regard to the CCMA and thereafter the substantive points raised by the first defendant in defending the within possession proceedings on their particular asserted facts.

**(ii) CCMA**

**23.** Unlike s. 3, the terms of the CCMA do not apply to the mortgage loan at issue here which was executed well before the property became the principal private residence of the first defendant. Whilst the mortgagee in *Fennell* conducted their dealings with the defendants on the basis that the Code did apply, Murphy J, in the High Court, was clearly not persuaded that this was required and described the CCMA as "*specified to apply to the mortgage loan on a borrower which* <u>*is*</u> *[my emphasis] secured by his/her primary residence*" (at para. 62). This was cited with approval by Whelan J in the Court of Appeal at para. 71. This means that the CCMA only applies where the property that secured the mortgage loan was the borrower's primary residence at the time the mortgage agreement was executed. The CCMA cannot become applicable where the secured property becomes the mortgagor's primary residence at a later date. The test is what the status of the property was at the time the mortgage was secured by the property, i.e. at the time the mortgage agreement was executed.

**24.** I therefore find against the first defendant insofar as he challenges the plaintiffs' non-compliance with the CCMA as a breach of s. 117 of the Central Bank Act 1989.

**Undue influence**

**25.** The first defendant asserts that the circumstances in which he signed the security instruments in 2006 raise a presumption of his father's undue influence over him which he says has not been rebutted by the plaintiffs in the absence of evidence that they advised him at the time to avail of independent legal advice. The first defendant was a 22-year-old student, living at home with his father and paying for his own education by working in his father's pub. The first defendant acknowledges that he signed the documents that his father asked him to sign but he says he did not read or understand them because he trusted his father. He relies on the decision of Barton J in *M'Mackin v Hibernian Bank* [1905] 1 IR 296 which found a presumption of undue influence existed where a child is living with or under the control of their parents. What may have applied in 1905 does not necessarily or so easily apply over 120 years later, not least due to the unfortunate current accommodation crisis (of which I consider I can take judicial notice) that has forced many adult children to continue to live in their parents' home. To suggest that such, now normalised, living arrangements in themselves lead to a rebuttable presumption of undue influence by a parent in whose home an adult child is living in, is unrealistic and artificial.

**26.** The first defendant was 22 years old when he signed the security documents over a property that his father had transferred to him some years previously. He was working, albeit for his father, as a bartender, not a job for the fainthearted. He was also studying and, impressively, had secured some financial independence and he says he was paying for his own college education. The fact that he was, like many young adults, still living at home does not in itself create a presumption of undue influence or, more significantly, remove the obligation that rests on any adult who signs legal documents to inform themselves of what they are signing and the consequences those documents have, or might have, for them and their property in the future.

**27.** The facts here or the circumstances in which the first defendant signed the security documents, do not give rise to a presumption of undue influence or actual undue influence. Those circumstances did not give rise to an obligation on the part of the plaintiffs or their predecessor to question the first defendant's ability to make decisions about his property or to advise or require him to take independent legal advice. The first defendant's claim that he operated under his father's undue influence is no more than a bald assertion insufficient to resist summary judgment as arose before the Court of Appeal in *Bank of Ireland v Curran & Anor* [2016] IECA 399.

**28.** The bulk of the first defendant's case on the substantive issues was directed to the allegations of undue influence. Without that, the first defendant's defence largely falls away. The factual controversies raised by the first defendant revolve principally around his understanding of documents presented to him by the second defendant and do not, absent evidence of undue influence, serve to deny the plaintiffs the reliefs to which they are entitled on a summary basis in circumstances where the plaintiffs have established that the loan facility and guarantee are and remain in default, that demands were made and properly served on the defendants at their last known addresses, that the plaintiffs hold the legal title to the mortgage and charge and that the receiver was validly appointed under the mortgage.

**29.** Therefore, if I am wrong in my view that this Court does not have jurisdiction to determine or grant the reliefs sought, the plaintiffs are entitled, pursuant to s. 62(7) of the Registration of Title Act 1964 and O. 3, r. 22 of the Rules of the Superior Courts, to the order for possession sought.

**<u>Indicative view on costs</u>**

**30.** Given my finding on jurisdiction, my indicative view is that the first defendant is entitled to his costs. I will put the matter in for mention for the purpose of making final orders including costs orders at 10.00 a.m. on 30 July 2026. In the event that either party wishes to file further written submissions, same should be with the court at least 48 hours in advance of the matter coming back before me.

Counsel for the plaintiff: Edward Murray BL

Counsel for the defendant: William Hugh Dunne BL