



**THE HIGH COURT
JUDICIAL REVIEW**

[2026] IEHC 648

RECORD NO. 2023/135 CA

CIRCUIT COURT RECORD NO. 2015/00522

BETWEEN

START MORTGAGES DESIGNATED ACTIVITY COMPANY

AND

**MARS CAPITAL FINANCE IRELAND DESIGNATED ACTIVITY
COMPANY**

PLAINTIFFS/RESPONDENTS

AND

P.J. ARMSTRONG

AND

AUDREY SHEPPARD

DEFENDANTS/APPELLANTS

JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 2nd day of October, 2026.

INTRODUCTION

1. This is an appeal pursuant to s.37 of the Courts of Justice Act, 1936 arising from an order of the Circuit Court made on the 22nd of June, 2023, whereby the learned Circuit Court judge granted an order for possession in favour of the Plaintiff then on record, directed recovery of possession of the property comprised in Folio TY50825F located in County Tipperary, imposed a stay on execution for six months and made consequential orders as to costs.
2. The appeal is brought by the first Defendant. The second Defendant has not actively pursued an appeal against the order for possession.
3. The proceedings arise from a loan originally advanced by Start Mortgages Limited in 2005 and secured by an indenture of mortgage and charge over the Defendants' dwelling house and lands at Roscrea, County Tipperary. The property was at all material times the principal private residence of the Defendants.
4. Following the making of the Circuit Court order, an assignment occurred whereby the interest of Start Mortgages DAC (formerly Start Mortgages Limited) in the loan and mortgage security was transferred to Mars Capital Finance Ireland DAC. By High Court order made on the 20th of January, 2025, Mars Capital Finance Ireland DAC was joined to the appeal proceedings. For convenience, Start Mortgages DAC and Mars Capital Finance Ireland DAC are collectively referred to as 'the Plaintiffs' in this judgment save where it is necessary to distinguish between them. Following the transfer effected in May, 2024, Mars became the registered owner of the charge and seeks the substantive relief in these proceedings.
5. The appeal falls to be determined by way of rehearing on the evidence which had been before the Court together with such additional evidence as may properly be received.

The principal questions arising concern (i) the Plaintiffs' entitlement to possession under s.62(7) of the Registration of Title Act, 1964, (ii) the legal effect of the transfers of the mortgage and underlying debt, and (iii) certain objections raised by the first defendant concerning securitisation, assignment and procedural matters.

6. Neither the application to admit new evidence, nor the application to cross-examine the Plaintiffs' deponents, nor the application to set aside the joinder of Mars Capital Finance DAC as Co-Plaintiff were separately pursued at the hearing before me, albeit the contents of the affidavits grounding these applications were before me for the purpose of opposing the making of a possession order.

BACKGROUND

The loan transaction

7. By letter of loan offer dated the 23rd of September, 2005, Start Mortgages Limited offered a mortgage facility in the sum of €100,000 to the Defendants. The facility was repayable over a thirty-year period and carried a variable interest rate of 5.4% at inception. The Defendants accepted the facility and executed the relevant acceptance documentation on the 5th of October, 2005.
8. On the 11th of November, 2005, the Defendants executed an indenture of mortgage and charge over lands later comprised in Folio TY50825F County Tipperary as security for the facility and all monies due thereunder. The mortgage contained the usual charging provisions, repayment covenants, default provisions and powers of enforcement available to the mortgagee.
9. The security was registered on the folio on the 3rd of March, 2006. The folio records the Defendants as registered owners of the property and the mortgage in favour of Start Mortgages Limited as a burden affecting the lands.

Securitisation

10. Shortly after completion of the loan transaction, the beneficial interest in the facility formed part of a securitisation process undertaken by the Start Mortgages group. Affidavit evidence filed on behalf of the Plaintiff in the Circuit Court proceedings

explained that while beneficial interests in groups of mortgages were transferred through securitisation arrangements, legal title to the facility and mortgage security remained vested in Start Mortgages Limited, which held legal title as bare trustee.

11. The mortgage documentation itself provided for assignment and securitisation and permitted disclosure of information for such purposes. Throughout the material period, legal ownership of the mortgage security remained recorded in the Land Registry in the name of Start Mortgages Limited.

Default

12. The Defendants fell into arrears at an early stage of the loan. The account statements exhibited in the Circuit Court proceedings demonstrated recurring arrears from 2007 onwards. While periodic payments were made from time to time, the account did not return to sustained compliance with contractual repayment obligations.
13. From approximately 2012 onwards, the arrears position deteriorated. The final payment recorded on the account was made on the 26th of November, 2013.
14. Demand letters were issued in April, 2014, requiring repayment of the sums due. Further demands for possession followed. The demands were not complied with.

Mortgage arrears process

15. As the property constituted the principal private residence of the Defendants, the lender sought to comply with the requirements of the Code of Conduct on Mortgage Arrears. Correspondence was exchanged with the Defendants and with advisors acting on their behalf in an effort to resolve the arrears situation.
16. The Defendants were ultimately classified as not co-operating for the purposes of the Code. The relevant notifications were issued in 2014. Thereafter, and following expiry of the applicable periods under the Code, possession proceedings were commenced.

Institution of the proceedings

17. The possession proceedings were commenced by Civil Bill issued on the 6th of August, 2015, in the Circuit Court for County Tipperary. The Plaintiff sought possession pursuant to s. 62(7) of the Registration of Title Act, 1964 and relied on the registered mortgage, the Defendants' default and the demands for repayment and possession.
18. The grounding affidavit was sworn by Siobhan Coen, Company Secretary of Start Mortgages Limited, on the 16th of July, 2015. The affidavit exhibited the facility letter, mortgage deed, folio, demand letters, possession demands, arrears statements and correspondence relating to compliance with the Code of Conduct on Mortgage Arrears.
19. Over the following years a substantial number of affidavits were exchanged. These included affidavits from the first Defendant raising issues concerning securitisation, assignment, standing, interest calculations, alleged procedural irregularities and delay. The Plaintiffs replied by way of a series of supplemental affidavits and updated statements of account.

Circuit Court determination

20. The account indebtedness continued to increase during the course of the proceedings. By affidavit sworn in June, 2023, the amount outstanding was said to be approximately €148,698.92, including arrears of approximately €62,454.76. The Plaintiff maintained that no payment had been made since November, 2013 and this was not disputed.
21. On the 22nd of June, 2023, the learned Circuit Court judge granted an order for possession, refused an application to remit the proceedings to plenary hearing, stayed execution for six months and made a costs order.
22. On the 30th of June, 2023, the first defendant lodged a Notice of Appeal to the High Court.

Transfer to Mars Capital

23. While the appeal was pending, Start Mortgages DAC transferred its mortgage loan portfolio, including the Defendants' loan and security, to Mars Capital Finance Ireland

DAC pursuant to a Global Deed of Transfer dated the 31st of May, 2024, and associated transaction documents.

24. The Defendants' facility was specifically identified within the schedule to the transfer documentation by reference to account number and property details. A Form 56 transfer of charge was subsequently registered and Mars Capital Finance Ireland DAC became the registered owner of the charge entered on Folio TY50825F. Notices of assignment were issued to the Defendants.
25. By order of the High Court (O'Donnell J.) made on the 20th of January, 2025, Mars Capital Finance Ireland DAC was joined as co-plaintiff in the proceedings. Following the decision of the Court of Appeal in *Pepper Finance Corporation (Ireland) DAC v. O'Reilly*, the Plaintiffs contend that the appropriate relief now falls to be granted in favour of Mars as substituted Plaintiff and current registered owner of the charge.

EVIDENCE

26. There were multiple affidavits exchanged in these proceedings. In all there were some nineteen substantive affidavits sworn on behalf of the Plaintiff (excluding affidavits of service) and ten affidavits sworn on behalf of the First Defendant/Appellant.

Plaintiff's Evidence

27. In her Affidavit grounding the application sworn on the 16th of July, 2015, Ms. Coen, as Company Secretary, confirmed that Start Mortgages Limited advanced a mortgage loan of €100,000 to the Defendants in 2005. She confirmed that she was making the affidavit with authority from the Plaintiff and on the basis of facts within her own knowledge and from a diligent perusal of the Plaintiff's books and records in relation to the Defendant and their account. She confirmed that the Defendants accepted the loan offer and executed the facility documentation. The loan was secured by an indenture of charge dated the 11th of November, 2005. The charge was registered against Folio TY50825F.

28. Evidence was also given that the Defendants fell into arrears. Demand letters issued in April, 2014. Possession demands issued in May 2014. As of the affidavit date, approximately €108,461 was due, including arrears of approximately €25,147.
29. Ms. Coen separately confirmed that as the property was the Defendants' principal private residence, the CCMA process was followed. She confirmed that warning letters issued and that the Defendants were ultimately classified as not "co-operating" with the result that the lender became entitled to commence proceedings.
30. In her second affidavit sworn on the 12th of May, 2016, Ms. Coen addressed the Defendants' securitisation complaints. She confirmed that the loan had been securitised in April, 2006 but that legal ownership remained vested in Start Mortgages. Beneficial interests only had been transferred through a securitisation structure. She referred to express agreement in securitisation documentation that Smart Mortgages continued to hold legal title to the loans and their related collateral security as "*bare trustee*". She confirmed in the evidence adduced that the mortgage expressly permitted securitisation (relying specifically on General Condition 5 of the Letter of Loan Offer dated the 23rd of September, 2006 and to Clauses 11.07 to 11.09 of the Indenture of Charge dated the 11th of November, 2005).
31. Ms. Coen also exhibited correspondence demonstrating extensive engagement with the Defendants and their advisers including requests for financial information and attempts to agree arrangements. She acknowledged that there had been correspondence with a third-party mediator engaged by the Defendants but confirmed that no agreement was reached nor alternative repayment arrangement entered into. She further addressed the defendant's objection that her grounding affidavit had been sworn prior to the issue of the Civil Bill and confirmed that the Civil Bill for Possession had been drafted and reviewed by her prior to her swearing the grounding affidavit. In addition, she confirmed that the Civil Bill for Possession as issued is, in all respects, identical to that reviewed by her prior to swearing her grounding affidavit.
32. In her third Affidavit sworn on the 1st of November, 2016, Ms. Coen addressed later issues raised by the defendants confirming, in particular, that Start Mortgages had converted to a DAC. She explained with reference to s. 63(12) of the Companies Act, 2014 that the conversion or registration did not affect its rights or proceedings and loan documents, account statements and interest history were exhibited. She confirmed that

the Plaintiff remained legal owner and creditor. She further rejected the Defendants claim to have been overcharged interest and confirmed that the plaintiff had applied a standard variable rate of interest as contractually agreed.

33. A series of affidavits were then sworn by one Eva McCarthy, in her capacity as litigation manager for Start Mortgages DAC, from 2018 to June 2023. Like Ms. Coen, Ms. McCarthy confirmed a diligent perusal of Start Mortgages' books and records in respect of the defendants and their accounts in swearing her affidavits. In these affidavits, she updated the evidence of indebtedness and responded to later allegations. The evidence consistently established ongoing arrears growth, no repayments since November, 2013, when a payment of €150 was made, the amount due progressively increased, the Plaintiff remained registered owner of the charge and the account balances exhibited were taken from business records.
34. The final affidavit before the Circuit Court hearing sworn on the 12th of June, 2023 confirmed total indebtedness of approximately €148,699 with arrears of approximately €62,455. It was again confirmed that there had been no payment since November, 2013.
35. In addition to the Affidavits sworn by Ms. McCarthy, a further series of affidavits were sworn by Justin Nevin in 2019-2021, also in his capacity as litigation manager and on foot of averments as to diligent perusal of Start Mortgages' books and records in relation to the defendants and their account, similarly updating indebtedness. In his affidavits, he gave evidence of updated balances, updated statements of account, confirming continuing default and non-compliance with repayment obligations.
36. By affidavit sworn on the 11th of October, 2024, Georgina Lanigan addressed the transfer of the Defendants' loan and security from Start Mortgages to Mars Capital Finance Ireland DAC to ground an application to join Mars Capital Finance DAC as co-Plaintiff. Ms. Lanigan identifies herself as Head of Asset & Debt Recovery at the solicitors for both the existing plaintiff and Mars Capital Finance.
37. She stated that she was authorised to swear the affidavit on behalf of Mars Capital Finance and relied on company and solicitor records kept in the ordinary course of business relying on the provisions of the Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020 and formally giving notice of an intention to rely on the exhibited documentation pursuant to s. 15 of that Act.

- 38.** In her affidavit grounding an application under Order 17, rule 4 of the Rules of the Superior Courts to have Mars Finance joined as Co-Plaintiff/Respondent, Ms. Lanigan confirmed the sale of business and assets from Start Mortgages to Mars Capital Finance, stating that the charge on foot of which possession had been ordered had been transferred to Mars Capital Finance. She exhibited the executed Global Deed of Transfer, explaining redactions by reference to commercial sensitivity and the data protection rights of third parties. She attested to the fact that on the 31st of May, 2024, the said Global Deed of Transfer was executed by which Start transferred to Mars Capital Finance the loan debt, accrued and future interest, rights under the loan documentation, security documents, ancillary rights and claims and the legal interest in the mortgage security.
- 39.** The affidavit further referred to a Transfer Agreement executed on the 31st of October, 2023 between Start, Start Mortgages Holding Limited and Mars Capital Finance. The agreement was said to provide for the sale, assignment and transfer of the relevant mortgage assets and finance documents to Mars Capital Finance. Ms Lanigan explained that the schedule to the transfer documentation contains a list of transferred loans including the Defendants' loan. She noted that information concerning unrelated borrowers had been redacted for confidentiality and data-protection reasons.
- 40.** A Deed of Amendment dated the 28th of May, 2024, was also exhibited. Ms Lanigan averred that no amendments contained in that deed affected the transfer of the Defendants' facility and charge. The affidavit confirms that a Form 56 transfer of registered charge was executed on the 31st of May, 2024, and Start Mortgages transferred all its interest in the charge to Mars Capital Finance and the transfer was registered with Tailte Éireann. Ms. Lanigan again confirmed that the relevant property is contained in Folio 50825F, County Tipperary.
- 41.** Ms. Lanigan also exhibited correspondence notifying the defendants of the transfer including "Goodbye Letter" from Start Mortgages dated the 4th of June, 2024, advising that the loan and charge had been sold and assigned to Mars Capital Finance. "Hello Letters" from Mars Capital Finance dated the 18th of June, 2024, confirming completion of the transfer and that Mars Capital Finance would become the borrowers' point of contact were also exhibited.

42. A further Affidavit was sworn by Ms. McCarthy on the 10th of November, 2025, in reply to the First Defendant/Appellant's motion seeking to set aside the Mars joinder. Ms. McCarthy adopted the transfer evidence previously sworn by Ms. Lanigan, confirmed that Mars was now registered owner and exhibited the folio entry demonstrating registration. She further confirmed the inclusion of contractual powers of transfer and securitisation in the mortgage conditions and her belief that the transfer was effective and valid.
43. Following the grant of the order for possession in the Circuit Court and the filing of the appeal to this Court, further affidavits were sworn by Ciarán Leavy, Solicitor, on behalf of the Plaintiff in response to the first Defendant's application to admit new evidence and an application to cross-examine the Plaintiff's deponents. The point was made that the first Defendant could have adduced evidence in relation to the calculation of interest at an earlier stage but did not do so. Insofar as the first Defendant had relied on the cost of obtaining an expert report, it was pointed out that he had not elaborated on what that cost was and contended that there was no adequate explanation for the failure to present the evidence sought to be adduced at an earlier stage and before the Circuit Court. Mr. Leavy further stated that the evidence sought to be introduced lacked credibility and that as these proceedings concern a claim for possession, as such the quantum of the Defendants' liability was not in issue.

Defendants' Evidence

44. In his first affidavit sworn on the 7th of March, 2016, the first Defendant advanced a broad challenge to the proceedings. Principal themes of his affidavit were objections to the Plaintiff's standing, demands for inspection of original documents, complaints concerning securitisation and general allegations concerning proof, ownership and authority. He took specific issue with the fact that the Civil Bill and grounding affidavit were not finalised on the same date with the affidavit sworn before the Civil Bill issued and the record number inserted onto the sworn affidavit subsequently. The affidavit did not deny borrowing the money, execution of the mortgage or that arrears existed.
45. In a further replying affidavit sworn on the 27th of May, 2016, the first Defendant focussed on jurisdictional objections, procedural objections, allegations concerning Land Registry matters and allegations regarding insolvency and securitisation

structures. Again, there was no positive evidence disputing the making of the loan, mortgage or default.

46. In two further affidavits both sworn on the 10th of January 2022, the first Defendant introduced further complaints asserting excessive delay in prosecuting the proceedings and alleged irregularities in securitisation transactions, alleged deficiencies in standing, dissatisfaction with engagement processes and complaints concerning arrears calculations. These affidavits remained largely argumentative and did not adduce competing factual evidence on the core mortgage transaction.
47. In an affidavit sworn on the 31st of March, 2022, the first Defendant sought to move the case out of summary possession proceedings asserting, *inter alia*, that a plenary trial was required, that the Plaintiff had not adequately established entitlement and that issues relating to ownership and securitisation required fuller examination.
48. Solicitors came on record for the first Defendant in April, 2022. In a subsequent affidavit sworn on the 8th of April, 2022, filed by his solicitor, the first Defendant addressed procedural and scheduling matters, repeated allegations already made, maintained his objections to the admissibility of evidence and issues relating to means of knowledge but said little about the mortgage debt itself.
49. Over the course of his affidavit evidence, the first Defendant raised numerous issues not confined to ownership and securitisation but also alleged deficiencies in standing, dissatisfaction with engagement processes and complaints concerning arrears calculations.
50. Following the grant of an order for possession in the Circuit Court and the filing of his appeal, the first Defendant swore a further affidavit on the 17th of July, 2023, in support of application to adduce new evidence on appeal. Although this application has not been determined, the evidence sought to be adduced was before me at the hearing. The affidavit relied principally on a report produced by PMJ Audits Europe. The report alleged that the mortgage should have been treated as a tracker mortgage, that repayments and balances may have been overstated, that the mortgage should have been included within the Tracker Mortgage Examination and that overcharging may have occurred. The affidavit also complained that certain Plaintiff deponents should have been cross-examined and that account calculations were unreliable.

51. In a further affidavit sworn on the 3rd of August, 2023, the first defendant elaborated on the same themes in relation to tracker mortgage issues, alleged overcharging, admissibility and reliability of plaintiff evidence and requests for cross-examination.
52. Finally, in an affidavit sworn on the 24th of March, 2025, the first Defendant sought an order setting aside the Mars joinder order. In this affidavit, he maintained that Mars was merely a credit servicer and he contended that the transfer documentation was insufficient to establish legal ownership. He criticised redactions and relied on annual accounts and regulatory materials contending that the beneficial owner had not been identified. He contended that the transfer documents did not prove an effective assignment.

SUBMISSIONS

53. Although the first Defendant/Appellant appeared as a litigant in person at various stages of these proceedings, both parties were represented by counsel at the appeal hearing and counsel on both sides addressed me in submissions.
54. The matter proceeded as a *de novo* hearing. In opening his application, Counsel for the plaintiffs/respondents, Mr. Neuman BL, confirmed that only the first Defendant/Appellant was pursuing the appeal and that the second Defendant had not appealed the possession order. He further confirmed that there had been discussions between counsel and the first Defendant/Appellant's motions were no longer being pursued as discrete applications and that the matter should proceed as an appeal against the possession order.
55. Counsel for the Plaintiffs/Respondents explained that, following *Pepper v O'Reilly*, the Plaintiff sought a fresh possession order in favour of Mars Capital Finance Ireland DAC and would rely on the substitution/transfer documentation.
56. Counsel opened the Circuit Court pleadings and referred to evidence that Start Mortgages Limited advanced a €100,000 loan to the Defendants in 2005, repayable over 30 years and that the loan was secured by a registered charge over the property. He opened the mortgage deed to highlight that the mortgage entitled the lender to

exercise possession rights upon default. He referred me to the evidence that the charge was duly registered on the folio.

57. I was further referred to evidence that the borrowers fell into arrears and no payment had been made since November, 2013. Demand letters including possession demands duly issued but were not complied with. I was also referred to evidence that the lender had complied with the Code of Conduct on Mortgage Arrears before issuing proceedings.
58. Counsel submitted that many issues raised in the various affidavits of Mr. Armstrong were not established in such a manner as to constitute a defence to possession proceedings including challenges to Ms. Coen's authority or means of knowledge, complaints concerning securitisation, allegations concerning production of documents, jurisdiction, procedural irregularities, delay and complaints regarding calculation of interest and quantum of the debt.
59. The Plaintiff/Respondent relied on affidavit evidence establishing that legal title to the loan and mortgage remained with Start Mortgages Limited and maintained that any securitisation transferred only beneficial interests. He submitted that the Plaintiff held legal title as bare trustee but remained legal owner of the security. He highlighted that the mortgage expressly authorised securitisation and assignment. Counsel submitted that Irish authorities had repeatedly confirmed that such securitisation arrangements do not prevent the registered charge holder from enforcing the mortgage.
60. Counsel then addressed the events occurring after the Circuit Court order when the entire loan and security were transferred from Start Mortgages DAC to Mars Capital Finance Ireland DAC pursuant to a Global Deed of Transfer and related documentation. He referred me to evidence confirming that the relevant loan account and folio were specifically identified in the transfer documentation. I was referred to evidence that a Form 56 transfer was lodged and the folio was updated to register Mars Capital Finance Ireland DAC as owner of the charge and that the borrowers were notified of the transfer.
61. Having referred to documents evidencing the chain of title in respect of the loan and security, Counsel submitted that the Plaintiff had satisfied the requirements identified in authorities such as *Bank of Ireland v. Cody* [2021] IESC 26 namely that the Plaintiff

was the registered owner of the charge and the right to possession had become exercisable because of persistent default. Counsel further argued that under s.64 of the Registration of Title Act, 1964, a registered transferee of a charge acquires the same enforcement rights as if the charge had originally been created in its favour. He submitted that the folio is conclusive evidence of ownership and cannot be challenged in possession proceedings. He stressed that complaints about quantum are irrelevant because the issue is default, not the precise amount outstanding.

62. He further submitted that hearsay objections to banking records are answered by the Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020. He submitted that the Court should follow the recent High Court decision in *Start Mortgages v Corr* [2026] IEHC 56, which upheld essentially the same transfer documentation and redactions.
63. In his submissions resisting the application on behalf of the First Defendant/Appellant, Mr. Dixon focused almost exclusively on the securitisation and transfer documentation. He submitted that the affidavit evidence of Ms. Coen established that the beneficial interest in the loan had been transferred to other entities while the legal owner held title as bare trustee.
64. In addition, Mr. Dixon referred to the fact that parts of the transfer documentation had been redacted and that certain parties to the transaction remained unidentified. He submitted that the Court could not determine from the available material whether unidentified beneficial owners possessed interests affecting the security.
65. Relying on Land Registry practice directions concerning trusts in land, he further argued that where trustees hold interests in land, the trust should be reflected in the registration process. He maintained that if Mars Capital Finance Ireland was only a trustee, the registration should have disclosed that fact. He said there was no evidence that the Land Registry had been informed of the trust arrangement and he maintained that public policy was offended by what he described as effectively "secret owners" of interests in land.
66. Mr. Dixon pointed out separately that the original grounding affidavit had been sworn before the Civil Bill was issued. He maintained that the later addition of record

numbers and court stamps appeared to involve post-swearing amendments or additions. He submitted that this created difficulties regarding formal proof and admissibility. I was not referred to any authority or statutory provision or specific practice requirement in this regard.

67. In conclusion, he submitted that because of the alleged deficiencies in the grounding affidavit and the uncertainty surrounding the trust and registration issues, the matter should be remitted to plenary hearing.

68. In reply, counsel for the Plaintiff/Respondent argued that the grounding affidavit remained valid despite having been sworn before formal issuance of the Civil Bill. He maintained that the addition of a record number and court stamps did not invalidate the affidavit referring to common practice in swearing affidavits to ground proceedings yet to issue with the addition of the record number upon filing of the papers. He submitted that Mr. Dixon's reliance on the Land and Conveyancing Law Reform Act, 2009 and Land Registry trust practice directions was misconceived because the case concerned a registered charge, not a legal estate in land held on trust. He submitted that the beneficial ownership arrangements underlying securitisation did not affect the registered charge holder's enforcement rights and accordingly, the First Defendant/Appellant had no basis to challenge the relationship between legal and beneficial owners. He concluded by reiterating that the issue of redacted transfer documents had already been comprehensively decided by Gearty J. in *Corr*.

ISSUES ARISING ON THE APPEAL

69. In submissions on behalf of the First Defendant/Appellant the existence of the loan, mortgage, arrears, default or registration history was not disputed. Instead, counsel for the First Defendant/Appellant concentrated on two points namely the alleged procedural infirmity in the original grounding affidavit and the contention that the transfer documentation showed only a bare trustee interest and therefore raised unresolved trust and registration issues requiring plenary determination.

70. An appeal pursuant to s. 37 of the Courts of Justice Act 1936 is a *de novo* rehearing, not an appeal for error (*Pepper Finance v. O'Reilly* [2025] IECA 140). The High Court

is not concerned with whether the Circuit Court was right or wrong but must decide afresh whether the party seeking relief is entitled to it on the evidence before the High Court at the date of the appeal hearing. Accordingly, this appeal proceeds by rehearing, and the High Court determines entitlement as of the appeal date. Therefore, notwithstanding the narrow focus of the submissions made on behalf of the first Defendant/Appellant, on a *de novo* hearing by way of Circuit Court appeal, I must be satisfied that the Plaintiff is otherwise *prima facie* entitled to an order for possession on the evidence and having considered my “*own motion*” obligations, such that my consideration of this application is not confined to two issues pressed.

71. It is not necessary, however, to address each of the multiple arguments made on affidavit by the first Defendant/Appellant where they have been satisfactorily addressed in replying affidavits and submissions or are patently wholly unsubstantiated, unsustainable or lacking in merit such that no real or live issue requires to be determined. Indeed, while not abandoning any points previously advanced, there was a welcome implicit acknowledgment that many of the points articulated through the affidavit exchange on behalf of the Defendants were weak such that further substantive engagement with these issues would be an improper use of scarce court time and limited judicial resources.

72. Accordingly, it seems to me that the issues requiring determination on this application are:

- (i) whether the plaintiffs have established the traditional *Cody* proofs;
- (ii) whether securitisation affects entitlement to possession;
- (iii) whether the transfer to Mars has been sufficiently established;
- (iv) whether any issue relating to tracker mortgage allegations, delay or procedural irregularity could constitute a defence to possession on the evidence adduced in this case; and
- (v) whether any issue arises requiring consideration by the Court of its own motion.

THE APPLICABLE LEGAL PRINCIPLES

73. The Plaintiffs/Respondents relied on a series of authorities including *Pepper Finance Corporation (Ireland) DAC v. O'Reilly* [2025] IECA 140; *Bank of Ireland Mortgage Bank v. Cody* [2021] IESC 26; *Start Mortgages DAC v Ryan* [2021] IEHC 719; *Tanager DAC v. Kane* [2018] IECA 352; *Mars Capital Finance Ireland DAC v. Walshe* [2025] IEHC 661; *Start Mortgages DAC v. Connaughton* [2023] IEHC 364; *Pepper Finance v. Kenny* [2023] IEHC 115; *KBC v. Wilson* [2019] IEHC 870; *Crowley v. Promontoria (Oyster) DAC* [2020] IEHC 309; *Irish Bank Resolution Corporation Ltd v. Comer* [2014] IEHC 671; *Start Mortgages DAC and Mars Capital Finance Ireland DAC v. Corr* [2026] IEHC 56; *Start Mortgages DAC and Mars Capital Finance Ireland DAC v. Curtis* [2025] IEHC 684 and *Murphy v. Minister for Defence* [1991] 2 IR 161. I was also referred to s. 37 of the Courts of Justice Act 1936, s. 62 of the Registration of Title Act, 1964 and Order 61, Rules of the Superior Courts.

74. The key authorities on the facts of this appeal are *Cody*, *Tanager*, *O'Reilly*, *Walshe*, *Corr* and *Curtis*, which collectively address the possession claim, the effect of registration, assignment of the charge, substitution of Mars Capital Finance DAC and the irrelevance of beneficial ownership arguments.

75. The decision of the Supreme Court in *Bank of Ireland Mortgage Bank v. Cody* is the principal authority in respect of the test applied in registered land possession cases. Baker J. held that a charge holder seeking possession under s.62(7) of the Registration of Title Act 1964 need prove only two matters:

- (a) that it is the owner of the charge; and
- (b) that the right to seek possession has arisen and is exercisable.

76. The Supreme Court in *Cody* described the Register as the starting point because ownership is proved through registration. It further explained that s.62 proceedings are genuine summary proceedings and are not intended to become plenary litigation unless

a real issue arises. In consequence, a defendant must do more than make broad assertions to resist summary judgment.

77. As for the legal effect of registration, the Court of Appeal in *Tanager* found that the Register is conclusive evidence of ownership under s.31 of the 1964 Act and a defendant cannot challenge the correctness of the Register in possession proceedings. Disputes about alleged registration errors must be brought in separate rectification proceedings. The Court specifically answered in the negative the question whether a defendant could challenge the registration of the plaintiff as owner of the charge during possession proceedings. Accordingly, if the plaintiff is registered as owner of the charge and no separate rectification proceedings exist, the court proceeds on the basis that the registered owner is the legal owner.
78. The decision of the Supreme Court in *Cody* was applied in *Start Mortgages v. Ryan* [2021] IEHC 719 where Woulfe J. reiterated proof of registered ownership of the charge together with proof of default are sufficient to ground an order for possession. In *Ryan*, the Court rejected securitisation defences, challenges based on corporate structure and objections unsupported by evidence.
79. In relation to the transfer of charges, the caselaw confirms that by virtue of ss. 31 and 64 of the 1964 Act, once a transferee becomes registered as owner of a charge, it stands in the shoes of the transferor and enjoys the same enforcement rights. Registration is conclusive evidence of ownership (*Tanager*, *Mars Capital v. Walshe* [2025] IEHC 661). In *Crowley v. Promontoria (Oyster) DAC*, Sanfey J. held that where registered land is involved, proof of ownership is straightforward because the Register is conclusive. In *Start Mortgages and Mars Capital v. Curtis*, O'Donnell J. expressly stated that a party seeking possession need not show beneficial ownership of the debt but may rely upon legal title.
80. It is clear from the authorities that securitisation is accepted as ordinary banking practice and it is established that it does not alter borrower obligations, does not prevent enforcement of the mortgage and does not invalidate the lender's rights (*Freeman v. Bank of Scotland* [2014] IEHC 284, cited in *Tanager* and *Ryan*). Indeed, the authorities

treat securitisation as legally irrelevant to possession once legal ownership of the charge is established.

- 81.** As for the admissibility of business records, many of the hearsay objections encountered in earlier cases have been addressed by the Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020 (*Pepper Finance v. Kenny*) and business records can now be admitted where statutory requirements are met. It is also established that affidavit evidence from servicing personnel in respect of transferred loan documentation and in reliance on account records derived from predecessor entities is acceptable (*KBC v. Wilson*).
- 82.** In *Irish Bank Resolution Corporation v. Comer*, Kelly J. held that on an application to substitute an assignee, the Court is not finally determining the validity of the assignment and the question is whether there is prima facie evidence of sale, assignment and notice. The detailed validity arguments remain for trial. Accordingly, the court in deciding on a possession application should be satisfied as to the evidence of assignment. In *Pepper Finance v. O'Reilly*, however, the Court of Appeal held that on a s.37 appeal where an assignment occurs after the Circuit Court order, substitution of the assignee is generally appropriate and the assignee steps into the shoes of the assignor. In such circumstances the assignor need not remain in the proceedings unless some special feature requires it. This authority departs from the earlier approach in *Irish Bank Resolution Corporation v. Halpin* for Circuit appeals.
- 83.** More recently in *Start Mortgages DAC and Mars Capital DAC v. Corr*, Gearty J. considered the same Start-to-Mars transfer which arises in these proceedings. Her decision is based on consideration of the same Global Deed of Transfer and the same redaction arguments and *Corr* is therefore a particularly relevant authority. In *Corr*, the court held, in reliance on *Ramseyer*, that the transfer was proven on the balance of probabilities as the operative clauses were not redacted and the explanations for remaining redactions were acceptable.
- 84.** Taken together, the authorities establish that the Plaintiffs/Respondents should succeed if they prove registered ownership of the charge, default making the secured debt due and entitlement to possession under s.62(7), unless a defence is otherwise established

by the Defendants/Appellant sufficient to defeat an entitlement to possession on the *Cody* proofs.

ANALYSIS AND DECISION

Overview

85. On the affidavit evidence before the Circuit Court and taking into account the later appeal affidavits, there is remarkably little dispute as to the core historical facts on this appeal. Most of the conflict is not factual but legal or inferential.

86. The traditional *Cody* proofs of (a) existence of a registered charge and (b) a long-standing payment default are not meaningfully disputed on the affidavits. The following matters were established by the Plaintiffs/Respondents' evidence and were not positively contradicted by affidavit evidence from the Defendants:

- I. A loan facility of €100,000 was offered and advanced by Start Mortgages Limited in 2005.
- II. The Defendants executed the facility documentation and the mortgage/charge.
- III. The charge was registered against Folio TY50825F.
- IV. The Defendants fell into arrears.
- V. Demand letters and possession demands issued.
- VI. No repayment has been made since November 2013.
- VII. The property is the Defendants' principal private residence.

87. As apparent from the summary of the affidavit evidence and the submissions above, the Defendants' objections to the grant of a possession order are primarily directed to assignment, securitisation or beneficial ownership. By the close of the affidavits, it seems to me that remaining factual disputes are confined to whether the PMJ/tracker mortgage allegations are factually correct and whether the transfer documentation

proves transfer of the loan and debt as well as the charge. Everything else is largely accepted fact, with the real contest being over the legal consequences of those facts, namely, the effect of securitisation, the sufficiency of registration, the effect of assignment and whether any of the Defendants' complaints amount to a defence to a possession claim.

88. In view of my findings at paragraph 86, it seems to me that the remaining issues for me fall into 5 broad categories, namely, the legal effect of securitisation, whether transfer to Mars effective, tracker mortgage and quantum, delay and the alleged procedural infirmity urged having regard to the fact that original grounding affidavit was sworn before the Civil Bill for Possession issued. I propose to now address these in turn.

Legal effect of securitisation

89. As explained in *Freeman v. Bank of Scotland plc* (quoted at length in *Ryan* at paragraphs 29-31), securitisation involves translating a bundle of mortgage receivables into a security that can be marketed to investors, the receivables are commonly transferred to a special purpose vehicle, the original lender normally continues servicing the mortgages, legal title commonly remains with the originating bank and beneficial interests are what are transferred to investors.

90. In these proceedings, the factual sequence of securitisation is largely common case and the real dispute is over its legal consequence rather than the underlying facts. The evidence is that securitisation occurred in 2006 and that at that time only beneficial interests were transferred with legal title remaining with Start Mortgages Limited until transfer to Mars Capital Finance DAC. The Defendants have repeatedly questioned whether securitisation divested Start of ownership, whether unnamed entities became the true owners and whether Start retained standing to sue.

91. The questions raised are not novel and have been exhaustively considered in other cases. As summarised above, the authorities treat securitisation as legally irrelevant to possession once legal ownership of the charge is established. In the normal course, therefore, securitisation is not a defence.

92. The key legal findings in *Freeman* were that the borrowers had expressly agreed in their mortgage documentation that the loans could be securitised, legal title to the loans and security remained with the lender, securitisation did not alter the borrowers' repayment obligations, securitisation did not prevent enforcement of the mortgage and the borrowers failed to establish that securitisation affected liability on the loan.
93. At paragraphs 28-31 of *Ryan*, Woulfe J. summarised and adopted the reasoning in *Freeman* accepting that securitisation is an ordinary banking practice and that legal title may remain with the originating lender notwithstanding securitisation such that the lender remains capable of enforcing the mortgage security and securitisation does not affect the mortgagor's liability to repay.
94. In his submissions before me Mr. Dixon argued on behalf of the first Defendant/Appellant that the evidence in this case shows Start was merely a trustee. He contended that this raises separate trust and registration issues. He argued that this undermined Start's and Mars' entitlement to rely on its registration as charge holder and justified a plenary hearing, relying on public Land Registry Practice Guidance restricting the registration of trusts in land.
95. Mr. Neuman for Mars Capital Finance DAC responded that it was not claiming any estate in the land itself but rather ownership of a registered charge. He referred to s. 64 of the Registration of Title Act, 1964 governing the transfers of charges and submitted that any distinction between legal and beneficial ownership was legally irrelevant in possession proceedings. He relied on the decision in *Corr* where Gearty J. had already rejected equivalent arguments concerning the same transfer documents and redactions.
96. It seems to me that the argument advanced on behalf of the first Defendant/Appellant conflates ownership of land with ownership of a charge. Mars Capital Finance DAC does not claim any freehold or leasehold estate in the subject property. The Defendants remain the registered owners of the land. Mars Capital Finance claims solely as the registered owner of the charge. Accordingly, in my view, Mr. Dixon's reliance on Land Registry practice relating to trusts of land is misplaced. The extracts to which he referred me concern legal estates in land. Mars is not registered as owner of the land but is registered as owner of a charge. The statutory regime governing transfers of charges is found in ss. 64 and 31 of the 1964 Act, not in the provisions of the practice direction relied upon by the first Defendant/Appellant.

97. Both *Freeman* and *Ryan* treat securitisation as irrelevant to a possession claim where the plaintiff can prove ownership of the charge and the right to possession has arisen through default on loan terms. In *Ryan*, after discussing *Freeman*, Woulfe J. expressly rejected the contention that securitisation prevented enforcement of the mortgage. Accepting therefore that Mars Capital Finance holds the charge as bare trustee for another entity, that is irrelevant to a possession application. The authorities establish that a party seeking possession need only prove (i) ownership of the charge and (ii) that the right to possession has arisen. Establishing beneficial ownership of the underlying debt is not one of the *Cody* proofs. *Bank of Ireland Mortgage Bank v. Cody* confirms the relevant test, while *Crowley v. Promontoria (Oyster) DAC* and *Start Mortgages DAC and Mars Capital Finance Ireland DAC v. Curtis* confirm that the registered legal owner of the charge may enforce it without proving beneficial ownership.
98. Further, s. 64 of the Registration of Title Act 1964 expressly provides that, upon registration of a transferee of a charge, the transferee has the same rights and powers to enforce the charge as if it had originally been created in its favour.
99. I am satisfied on the authorities that beneficial ownership is irrelevant to the issues before me on this application because, where registered land is involved, the Register is conclusive evidence of ownership of the charge (*Crowley v. Promontoria (Oyster) DAC*). Accordingly, once a plaintiff proves legal ownership of the charge, it need not identify the beneficial owner and it need not explain the ultimate beneficiary (*Start Mortgages and Mars Capital v. Curtis*). In short, whether Start Mortgages held or Mars Capital Finance now holds the charge solely for its own benefit or as trustee for another is immaterial. The only relevant fact is that Mars Capital Finance is the registered owner of the charge, as established, and therefore entitled to exercise the statutory remedies attaching to that charge. The registration of Mars Capital Finance as owner of the charge is conclusive for the purposes of these proceedings.
100. In my view, this disposes the Defendants' contention that some unidentified ultimate owner must be identified and that the plaintiff/respondent holds as bare trustee and is therefore not entitled to seek possession. Start retained legal title notwithstanding securitisation when proceedings commenced and therefore Start could maintain possession proceedings. Where an effective transfer of the Start interest to Mars Capital

Finance DAC has occurred, this means that Mars steps into Start's shoes and is entitled to maintain these proceedings in its place.

Whether the transfer to Mars effective

101. The first Defendant/Appellant contends that the transfer documents before the Court are insufficient to ground relief in these proceedings despite the fact that the Plaintiffs' evidence establishes execution of the Global Deed of Transfer, identification of the Defendants' account in the schedules, execution of Form 56, registration of Mars as owner of the charge and service of goodbye and hello letters.

102. The first Defendant contends that redactions conceal relevant information and suggests that Mars may be only a servicer or trustee and the beneficial owner remains unidentified. The Global Deed of Transfer and the relevant schedule exhibited demonstrate the formalisation of the transfer transaction, the transfer of mortgage assets and related rights from Start to Mars Capital Finance and that the Defendants' loan is included within the transferred portfolio. The schedule is heavily redacted to remove information relating to other borrowers but enough is retained to identify the Defendants' account as one of the transferred loans. The redacted extract from the Transfer Agreement entered into between Start, Start Mortgages Holding Limited and Mars Capital Finance exhibited contains the contractual machinery by which the mortgage assets and associated rights were sold and transferred and establishes the legal basis for the assignment.

103. The exhibited Form 56 is the statutory Land Registry form entitled "Transfer of the Registered Charges and Security". It records the transfer of the registered mortgage security from Start to Mars Capital Finance and links the transfer to the property the subject of these proceedings. The Land Registry folio is exhibited to show the identity of the property, that it is registered land and that the transfer of the charge to Mars Capital Finance has been registered. The hello and goodbye letters exhibited complete the evidential chain showing notice of the transfer being given by both the outgoing and incoming entities.

104. I am satisfied that the documents exhibited to Ms. Lanigan's Affidavit sworn in October 2024 provide evidence of the contractual transfer, the registration of the

transfer and notification of the borrowers. The very same transfer documents, the same redactions and substantially the same arguments were considered in *Corr*, where the Court held that the transfer from Start to Mars had been proved and that Mars was entitled to enforce the charge. The recent decision in *Corr* is clearly an important authority on this issue because it is on all fours with this case as regards assignment and substitution. In *Corr*, Mars was found to have been validly substituted as plaintiff and entitled to enforce. I see no basis for reaching a different conclusion in this case.

- 105.** Registration as owner of the charge is sufficient to establish legal ownership for possession purposes. In any event, the transfer documentation in this case independently establishes the transfer. In circumstances where Mars Finance is now registered as owner of the charge and where the evidence establishes that the loan has been transferred to it, I am satisfied that it is entitled to pursue an Order for Possession and take the benefit of same as the legal owner of the charge.

Tracker Mortgage/Overcharging

- 106.** The tracker mortgage / overcharging allegations were not pursued during the hearing before me but were addressed at some length on affidavits filed in the High Court which the first Defendant sought liberty to admit as new evidence. While these affidavits, if admitted, demonstrate the existence of a factual controversy, the controversy concerns quantum rather than the existence of the debt, the existence of the security and the entitlement to possession. The allegations do not undermine either of the two matters identified in *Cody*, namely ownership of the charge and the existence of an exercisable right to possession
- 107.** Nothing in the affidavit evidence appears capable of affecting entitlement to possession. It is not contended that but for the alleged overcharge of interest and erroneous calculation of sums outstanding, the first Defendant would have continued to meet obligations to repay. It is recalled that this is a case in which no payments whatsoever have been made for more than twelve years. I am satisfied that even were the affidavits to be admitted, the “new” evidence sought to be introduced is not material to possession in this case.

Delay

- 108.** The Defendants complained on affidavit about delay in prosecuting the proceedings and delay in obtaining possession, but the delay issue was not pressed on appeal. The Plaintiff accepted that delay occurred but maintained that arrears persisted throughout and delay does not extinguish the mortgage rights.
- 109.** Although other cases demonstrate delays like those in this case, the approach reflected in the jurisprudence is not to treat delay as a standalone defence in possession proceedings where ownership of the charge and default are established. Once ownership of the charge and default have been proved, delay is ordinarily relevant only as an equitable discretionary factor. It will rarely defeat a possession claim unless coupled with demonstrable prejudice or another recognised equitable defence which is of a degree which outweighs the competing interest of a legitimate plaintiff. This is consistent with the fact that delay may inure to the benefit of a defaulting debtor by affording an opportunity to regularise financial affairs and engage with the lender to address the debt, whilst maintaining a roof over the debtor's head. In assessing any prejudice claimed arising from delay contributed to by a debtor's resistance of a claim for possession and a refusal to surrender on foot of a legitimate claim for possession, the court must also have regard to the extent to which a defendant to possession proceedings contributed to or caused delay by resisting a claim which the court is ultimately satisfied is otherwise established.
- 110.** I do not out rule that delay could become material on the facts of an individual case if it gives rise to some distinct legal issue (for example, prejudice affecting fair procedures, an evidential problem or another recognised defence) but no such issue is demonstrated in this case. It seems to me that in this case, discretionary factors weigh against the first Defendant/Appellant because of long-standing default with no payment since 2013, continuing indebtedness and multiple appeals and procedural steps over many years all serving to frustrate the finalisation and enforcement of a possession order.
- 111.** I am satisfied that the delay in question in this case and on the established facts cannot operate to preclude the making of an order for possession.

- 112.** The contention in this regard is difficult to understand and has not been substantiated by reference to any legal provision or practice requirement. There is nothing unusual in a grounding affidavit being sworn before proceedings issue or are allocated a record number. The later addition of record numbers and court stamps is a common occurrence and does not involve post-swearing amendments or additions of a kind which could conceivably constitute a procedural irregularity capable of creating difficulties for formal proof or admissibility because the affidavit was sworn before proceedings issued. Later essentially administrative or clerical additions associated with court filing do not alter the substance of the affidavit.
- 113.** It is noted that Ms. Coen confirmed in a subsequent affidavit in response to issues raised by the first defendant that the Civil Bill for Possession had been drafted and was available to her when she swore her first grounding affidavit and was the same as the Civil Bill which issued. In the light of these averments, I do not understand why the complaint regarding the date of swearing of the affidavit is still being maintained.
- 114.** It seems to me that objection to the grant of an order having regard to the date of swearing of the grounding affidavit and the subsequent addition of a record number is entirely without merit. There is ample admissible evidence before me to ground the application for summary possession.

Own Motion Obligations

- 115.** Where borrowers are consumers, the Court must consider whether contractual terms engage the Unfair Terms in Consumer Contracts regime, regardless of whether the issue is articulated. The EU own-motion obligation requires the court in possession proceedings to independently consider whether any consumer-protection issue arising from unfair contractual terms affects the entitlement to possession.
- 116.** Assuming that the defendants are consumers, I have considered the facility letter, mortgage conditions and related documents. I have not identified any term that appears potentially unfair, nor has any such term been identified to me.
- 117.** Having considered the entirety of the affidavit evidence, the submissions of counsel and my own-motion obligations, I am satisfied that the plaintiffs have established the

matters required by *Cody*. The existence of the mortgage, the registration of the charge and the defendants' longstanding default are not materially disputed. I am further satisfied that securitisation did not affect the enforceability of the charge, that the transfer from Start Mortgages DAC to Mars Capital Finance Ireland DAC has been adequately established and that Mars is now entitled to rely upon its registration as owner of the charge.

118. I am further satisfied that none of the matters raised by the first Defendant, whether concerning securitisation, beneficial ownership, delay, alleged overcharging, or the timing of the grounding affidavit, gives rise to a defence to the possession claim or displaces the Plaintiffs' *prima facie* entitlement to relief. Accordingly, I am satisfied that Mars Capital Finance Ireland DAC has established its entitlement to possession of the secured property.

CONCLUSION

119. I have concluded that Mars Capital Finance Ireland DAC has established the two matters identified in *Cody*: first, that it is the owner of the charge; and secondly, that the right to seek possession has arisen and is exercisable. None of the issues raised concerning securitisation, beneficial ownership, assignment, delay, alleged overcharging or procedural irregularity displaces those conclusions or give rise to material conflicts of fact warranting the grant of leave to cross-examine. No proper basis for remitting this matter to plenary hearing has been established.

120. I am therefore satisfied that Mars Capital Finance Ireland DAC, as registered owner of the charge and substituted Plaintiff/Respondent, is entitled to an order for possession.

121. I will hear the parties in relation to the form of the order and any consequential matters. The proceedings will be listed for mention upon the expiry of 14 days from the date of electronic delivery of this judgment.