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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **ex tempore 02/02/2023**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

ENGAGE CREDIT LIMITED

Appellant:

v

SARA ROBINSON

Respondent:

_____

Before: McCloskey LJ and Horner LJ

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The appellant appeared as a Litigant in Person
Mr Adair (of Wilson Nesbitt Solicitors) for the Respondent

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McCLOSKEY LJ (*delivering the judgment of the court*)

[1] In very brief compass, the most recent events in what has become a veritable litigation saga have involved the Master of the Chancery Division and the Judge of the Chancery Division. The appellant brought an application to the Master of the Chancery Division which was seeking a stay of enforcement. The Master, by her order dated 22 August 2022, dismissed the application. The appellant appealed to the Chancery Judge who, by his order dated 1 December 2022, dismissed that appeal thereby affirming the order of the Chancery Master.

[2] There is a lengthy background to all of this. It is unnecessary for the court to rehearse it extensively. It is appropriate to add to the preamble which I have already provided that the effect of the order under challenge before this court was to stay enforcement until midnight on 31 January 2023 of a previous order granting possession of the subject premises to the plaintiff. It is rehearsed in the order of the Chancery Court dated 1 December 2022 that the anterior operative order is dated 3 March 2009. Therein lies part of this protracted tale.

[3] The saga began on 17 May 2007 when a mortgage was effected by the parties. The mortgage arrangement related to residential premises at 148 North Road,

Carrickfergus, the amount of the advance was £200,000, the repayment term was one of 23 years and the charge was granted on an interest only basis. Almost 16 years later these proceedings remain alive, with the appellant (and others) occupying the premises and the mortgage repayments for the most part not made.

[4] While it is not for this court to inquire into why this regrettable state of affairs has materialised it is appropriate to observe that there has been one stand out beneficiary of that protracted period of delay, namely the defendant/appellant Sara Robinson. More recently it would appear there may have been other beneficiaries, that is other persons who have been able to take advantage of this by residing in the subject property. Further recitation of the history would be otiose.

[5] The hearing today has been convened for the purpose of determining whether this court should grant leave to the appellant to appeal against the most recent order of the Chancery Court. We do not need to rehearse in any detail the several positions the appellant has adopted and the various assertions, claims and representations that she has made at different stages of these lengthy proceedings. It suffices to say for present purposes that those claims, assertions, representations, and promises have by and large been unsustainable and unfulfilled and have fallen manifestly short of what first the Chancery Master and latterly the Chancery Judge required to warrant a continued exercise of their discretion under the Administration of Justice Act. Most recently the appellant's position has been that the exercise of that discretion should entail yet another stay of enforcement of the possession order, until approximately May 2023.

[6] Leave to appeal to this court is required by virtue of section 35(2)(g) of the Judicature (Northern Ireland) Act 1978. If and insofar as any previous decision of this court is required to copper fasten the proposition that leave to appeal against the impugned order is sought it is found in *Quinn v Swift* [2022] NICA 43.

[7] The primary provision in the Judicature Act is of course supplemented by rules of court. The relevant rule in this context is, in the main, Order 59 rule 14. This provides:

> "Wherever under these rules an application may be made either to the court below or to the Court of Appeal it shall not be made in the first instance to the Court of Appeal except where there are special circumstances which make it impossible or impracticable to apply to the court below."

The appellant has failed to apply to the court below as required by the rule and is therefore in the position of having to demonstrate before this court that this failure is explicable by reference to special circumstances which made that course impossible or impracticable.

[8] The court has considered the case made by the appellant in the materials that are amassed for the purpose of this hearing in the appellant's affidavits and in her skeleton argument, supplemented finally by her oral representations to this court today. The unavoidable conclusion is that there is nothing remotely approaching anything which could be considered to be special circumstances making it impossible or impracticable to apply to the court below for leave to appeal to this court.

[9] Viewing the matter more broadly, and if that primary conclusion is in some way erroneous, we shall apply the more generous test of whether the appellant has an arguable case which would warrant the grant of leave to appeal to this court. I have already adverted to the central feature of the history of these proceedings, namely, the periodic assertions, claims, promises, and representations made by the appellant regarding repayments of the loan advanced and the associated failure to fulfil or honour any of those. Most recently the appellant has placed reliance on a document entitled "Heads of Terms" and also on a deed of trust. It has been confirmed to this court that these are not being considered by this court for the first time, having already featured in earlier hearings before both the Chancery Master and the Chancery Judge, neither of whom was persuaded to grant a more generous stay of execution on foot thereof. This court can identify no basis whatsoever for disagreeing with those evaluative judgments.

[10] Accordingly, on the alternative basis which I have just set out, if this court should properly determine the current application by applying the more relaxed and generous test of whether there is an arguable case fit for further consideration by this court at a substantive stage, the appellant manifestly fails to overcome that threshold. Viewed in the most sympathetic way possible it is impossible to identify any merit whatsoever in the appellant's case.

[11] Subject to all of the foregoing, if and insofar as it is appropriate to view this application through the lens of extension of time having regard to the provisions in Order 59, rule 15 considered in conjunction with Order 3, rule 5, that would involve the conventional exercise of giving effect to the code of principles contained in the earlier decision of this court in *Davis v Northern Ireland Carriers*.

[12] In very brief compass the application of those principles yields the following analysis. First of all, the relevant time limit has expired, so that operates to the detriment of the appellant. Second, the effect on the other party would be manifestly prejudicial and, having regard to the history of these proceedings, there is no indication whatsoever that the other party could, in the event of time being extended, be compensated by costs. Third, there have been full blown hearings on the merits, by the Chancery Master at first instance and by the Chancery Court on appeal and therefore there will be no refusal of a hearing on the merits by declining to extend time. Fourth, there is no conceivable point of substance which could not otherwise be put forward. Fifth, it follows inexorably that there is no point of

general significant of substance. Finally, of course, there is the overarching principle, namely, that the rules of court are there to be observed.

[13] Accordingly, if it is necessary to determine this application either in full or in part through the lens of extending time, the unavoidable conclusion to be made is that there is no basis whatever for doing so.

[14] Therefore, from all of the foregoing the following order will be made by this court:

(1) We refuse leave to appeal.

(2) If and insofar as is necessary we refuse to extend the time limit for applying to this court for leave to appeal and/or bringing the appeal before this court.

(3) The order of the Chancery Judge which is under challenge dated 1 December 2022 is affirmed in all respects.

(4) (Having considered the parties' representations) the appellant will pay the respondent's costs above and below.