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Judgment: approved by the Court for handing down
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

SANTANDER UK PLC

-v-

ANTHONY PARKER (No. 2)

DEENY J

[1] This matter comes before me in the following way. In Santander UK Plc. v Anthony Parker [2012] NI Ch.6 I gave judgment on an appeal from Master Ellison. I considered the submissions made by Mr Anthony Parker but could not find anything that would justify overturning the decision of the very experienced Master in Chancery and I rejected the appeal. Mr Parker then appealed to Her Majesty's Court of Appeal in Northern Ireland. At a hearing before that court Morgan LCJ, who was sitting with Higgins LJ and Stephens J, raised an issue as to whether the mortgage deed relied on by Santander was sealed and if it was not whether it was enforceable, but primarily the point is whether it was sealed so as to constitute a deed. Junior counsel for the plaintiff, unwisely in my view, conceded that it was not sealed but submitted that Mr Parker was estopped from denying the enforceability of the mortgage deed. As that point had not been raised before me the Court of Appeal very properly remitted the whole issue to me for consideration. It can be seen that the point is one in ease of Mr Parker if it were a good point and so by raising the matter the Court of Appeal were potentially assisting Mr Parker but allowing Santander to put before this court any relevant contrary submissions.

[2] At the hearing before me this morning Mr Mark Orr QC for the plaintiff addressed me and I take into account the submissions which he made. In the course of the submissions he sought leave to withdraw the concession made by his junior to the Court of Appeal and I granted him such leave. Mr Parker was today, as he was on the earlier occasion, a litigant in person.

[3] When I sat in this matter initially today he showed an obstructive approach to the conduct of the hearing which was followed by a demand to see my oath of office as a judge which was unlikely to be appropriate in any event but utterly inappropriate when I was dealing with a matter remitted from the Court of Appeal and this was followed by direct defiance of the orders of the court constituting, subject to any submissions which I will hear after this judgment, a contempt in the face of the court. Following his removal he was given two opportunities by a senior chancery official to return if he would undertake to be of good behaviour when the hearing resumed but such assurance was not forthcoming. However, at the hearing of the matter before the luncheon interval I reread his written submissions and have taken them into account; those are his written submissions of 23 May 2012 in a document he entitles "Sovereign Affirmation" but which in effect are legal or quasi legal submissions.

[4] I turn then to the point at issue returned by the Court of Appeal which is in relation to the sealing of the deed relied on by the plaintiff lender against the defendant. I first of all deal with one factual point. The defendant continues to believe that this is not the original deed. I can only say that it seems to bear all the hallmarks of being an original deed. It has been provided to the court office with some other documents and I find as a fact that it is indeed the original deed. It is not uncommon for copies in this age of photocopying to be used at proceedings but the original was furnished on the direction of Lord Justice Girvan who heard a review of this matter a week before I heard the appeal from Master Ellison. [Counsel told the Court that this was because there was some uncertainty as to the figures involved.]

[5] Now the document in question is a mortgage from Abbey National. As found at the earlier hearing there was no issue that Santander are now entitled on foot, indeed, of a practice direction of the Lord Chief Justice, to appear in this court to enforce mortgages of Abbey National which is now, I think, one of their trading names and is certainly a subsidiary of Santander UK Plc. The document describes itself as a mortgage, it does not describe itself as a deed, and it is between the borrower Anthony Parker of 19 Earlscourt Street and Abbey National. It relates to 35 Forfar Street, Belfast. There is no argument as to the location of the premises. It was originally in the sum of £19,500. Perhaps unhappily or regrettably at a much later date Mr Parker borrowed significant other sums of money from the lender here so that the debt is now of the order of £100,000 but it is the deed itself, the original deed, with which I am concerned. It is common case that this is unregistered land, so I need not deal with the special rules relating to registered land. The date on the document is 28 June 1991 so it can be seen to be long before the passing of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005. That was brought into effect by the Law Reform (Miscellaneous Provisions) 2005 Order Commencement and Transitional Saving Order (Northern Ireland) 2005 with effect from 15 November 2005. It will be recalled that that provision further relaxed the

requirements regarding the constitution of what was a deed executed by individuals.[1]

[6] Now the most important part of this which was evident from the copy and is equally evident from the original is at the foot of the document. The document, having set out the relevant provisions as I have indicated, the address, the amount borrowed, the rate of interest, the demise by the borrower as beneficial owner of the property to the company etc. then reads as follows: "Signed, sealed and delivered in presence of" and Mr Parker has there signed his name, as he has never denied, above the word "Borrower" and then appears "(Seal)" on the same line as his signature. Signed, sealed and delivered in the presence of borrower and seal are all printed words and Mr Parker's signature is then appended and it is witnessed by two persons both of whom say they are solicitors, then of 207 Falls Road, Belfast. The issue is whether those words constitute a sufficient indication of the seal to constitute a deed. Clearly there is no wax seal attached, there is no wafer, nor as it was sometimes found in the past a ribbon of some kind which has been held by the court to be sufficient. But was this enough to constitute this deed? It should constitute a deed because in this jurisdiction the courts at law have held that a mortgage should be a deed and indeed this deed was registered in the Registry of Deeds of Northern Ireland on 16 August 1991 [pursuant to s.2, Registration of Deeds Act (N.I.) 1970].

[7] Now it is trite law, as the Lord Chief Justice properly acknowledged, that it is sufficient to constitute a seal if one finds on a document a printed circle with the letters LS within it. It will be recalled by some people but by no means all that LS are the first letters of two Latin words, locus sigilli, which mean the place of or for the seal. While originally that was to indicate where a seal should be attached, for something like half a century or more it has been a substitute for a seal and Her Majesty's Court of Appeal accepted that that would be sufficient. I do have to ask whether it is a proposition to be adopted that a printed circle with the first letters of two Latin words is a better indication either to the parties, whether lay people or lenders, that this is intended to be a deed and a sealed deed than the words "signed, <u>sealed</u> and delivered in the presence of" the borrower followed by the word "<u>Seal</u>"? It can be seen from the deed and I infer and find as a fact if necessary that it is not

[1] This reform followed recommendations of the Law Reform Advisory Committee for Northern Ireland. In its Discussion Paper No. 7, at 6.06 the Committee noted that "the use of seals by individuals has fallen into desuetude and the form of a ritual that serves no purpose." In its Report No. 10, Deeds and Escrows,

at 2.05 one finds this. "At the present day, if a party signed the document bearing wax or wafer or the <u>indication of a sea</u>l with the intention of executing the document as a deed that is sufficient adoption and recognition of the seal to amount to due execution as a deed". (Authorial underlining.) See par. 9 below where these words are used by Danckwerts J. The statutory reform which followed is not inconsistent with the view I have formed as it was not only a wise step to be taken out of caution but also an appropriate one to clarify what precisely was required, without parties having to seek judicial determination in the future. The Committee's views echoed those of the Survey of the Land Law of Northern Ireland, 1971.

intended that little pieces of wax be appended above or below the word seal here. It is easy to infer that on this deed because in fact there are three lines close together with the word seal at the end of each of them to allow for the signatures of two borrowers and a surety and Mr Orr accepts or submits that there was no such intention and that seems to me the proper and reasonable inference, but the word seal is here. I have to say I find it a rather extraordinary proposition in the year 2012 or even 1991 that a circle with the first letters of two Latin words is sufficient indication of a seal to bind borrowers to this important document but the words signed, sealed and delivered followed by the actual word Seal is not. The brackets are akin to a circle and instead of the archaic L.S. we find the plain word Seal. It seems to me there is a clear warning in this Abbey National mortgage that people are entering into a legally binding document and they are doing so as if it were sealed. I might add that it seems surprising, to put it mildly, that no-one in the intervening 20 or more years since this document was used by Abbey National, and we do not know whether it was used before that, that none of my predecessors nor the Masters in Chancery because it will be recalled that the very experienced Master Ellison upheld this document as well, that no borrower has apparently established before either myself or my predecessors or the Masters that such a document is not a deed.

[8] Happily my own view of this matter does not stand alone but is supported by strongly persuasive authority and there are it seems to me three relevant cases which have been drawn to the court's attention. There does not appear to be any relevant Northern Ireland authority and counsel have not taken me to Moir on Land Registration [cf 2.9 regarding registered land] or O'Neill [Law of Mortgages in Northern Ireland, 2008] and I am not currently aware of anything in that. Likewise Fisher & Lightwood are silent on the topic which might indicate that it is not a matter that has given difficulty in the neighbouring jurisdiction.

[9] The first case to which I turn is Stromdale and Ball Limited v Burden (1952) 1 AER 59. That was a decision of Danckwerts J in the Chancery Division of the High Court in London and he says at page 62G:

> "Meticulous persons executing a deed may still place their finger on a wax seal or wafer on the document but it appears to me that at the present day if a party signs a document bearing wax or wafer or other indication of the seal with the intention of executing the document as a deed that is sufficient adoption or recognition of the seal to amount to due execution as a deed." [Authorial underlining throughout.]

[10] I think I need not read further but he raises the issue there of some other indication of a seal as being sufficient. That was quoted with approval when the matter came before the Court of Appeal in England in First National Securities

Limited v Jones and Another [1978] 2 AER 221. The members of the court were Buckley LJ, Goff LJ (as he then was) and Sir David Cairns and that related to a legal charge and its enforceability. Lord Justice Buckley gave the first judgment of the court, I do not think I need read it in extenso but he quoted with approval, at p.224 f, from the decision of Chief Justice Bovill in Re Sandilands (1871) Law Report 6 Common Pleas 411 at 413:

> "Bovill C.J. said he thought there was prima facie evidence that the deed was sealed at the time of its execution and acknowledgment by the parties. I quote now from his judgment:
>
> > 'To constitute a sealing, neither wax, nor wafer, nor a piece of paper, nor even an impression, is necessary. Here is something attached to this deed which may have been intended for a seal but which from its nature is incapable of retaining an impression. Coupled with the attestation and the certificate, I think we are justified in granting the application that the deed and other documents may be received and filed by the proper officer, pursuant to the statute."

Apparently there were some pieces of green ribbon attached. Buckley LJ went on:

> "Byles J. said that the sealing of a deed need not be by means of a seal; it may be done with the end of a ruler or anything else. Nor it is necessary that wax should be used."
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> He went on to say:
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> "The attestation clause says that the deed was signed, sealed and delivered by the several parties and the certificate of the two special commissioners says that the deed was produced before them and that the married women 'acknowledged the same to be the respective acts and deeds'."
>
> He thought there was prima facie evidence that the deed was sealed. Montague Smith J. concurred on the ground that the attestation was prima facie evidence that the deed was sealed and that there was

> no evidence to the contrary. So that authority appears to establish that for due execution of a deed it is not necessary to have any physical seal, or even any impression on the paper, as long as the evidence establishes that the document has been delivered by the relevant party as his act and deed; and in the view of Mr Justice Montague Smith at any rate, the attestation of the execution of the deed as being signed, sealed and delivered as the party's act and deed is prima facie evidence that the deed was sealed."

[11] I must say that in fairness to Mr Parker he had never sought to argue that point, in my view correctly, and there is no evidence to the contrary here. For the avoidance of doubt I find that this deed was delivered by the simple fact that the deed itself was not in the possession of Mr Parker but was in possession of the lender which then produced it to the court for my earlier hearing on the direction of my brother Girvan i.e. it had been delivered to the lender which had retained it. I think I will just quote one further short passage from the judgment of Lord Justice Buckley which is also I think helpful and this is at 227D:

> "But it is a very familiar feature nowadays of documents which are intended to be executed as deeds that they do not have any wax, or even wafer, seal attached to them, but are printed at the spot where formerly the seal would probably have been placed, a printed circle, which is sometimes hatched and sometimes has the letters 'L.S.' within it, which is intended to serve the purpose of a seal if the document is delivered as the deed of the party executing it."

That is a salutary reminder that of course one does sometimes find that on documents taken as deeds a circle and not L.S. in it but just a little hatching. Again I ask rhetorically how that could be a sufficient seal if the word Seal written after the signature of the borrower written after the words "Signed, Sealed and Delivered in the presence of" is not? Surely the word seal is a much more definite indication of a seal than a hatched circle?

[12] The second judgment was that of Goff LJ also at page 227. He said there were two questions of law to be determined.

> "The first is whether, whatever on the facts, there can be a deed when nothing is attached to the paper, but it has merely, as in the present case, a printed or written indication of the place where a seal should be affixed."

Goff L.J. found that a printed or written indication of the place where a seal should be affixed was enough. Now here I have a printed indication in the form but he seems to think that even a written indication would be enough. At page 228 this distinguished judge goes on as follows.

> "The dictum of Mr Justice Danckwerts in Stromdale and Ball Limited v Burden also cited at [1952] Ch. 223 at 230 strongly supports the view that an instrument having nothing physically affixed to it, but merely indicating where the seal should be, is capable of being executed as a deed for the learned judge said" and he then quoted the passage already quoted by me.

Goff LJ went on:

> "In my judgment, in this day and age, we can, and we ought to, hold that a document purporting to be a deed is capable in law of being such although it has no more than an indication where the seal should be."

He then goes on to discuss National Provincial Bank in the rest of that paragraph and he concludes:

> "In my judgment, therefore, the alleged legal charge was capable of being a deed, although it bore no seal and nothing was physically annexed to it.
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> Then it becomes a question of fact and I turn to the second question whether there is any evidence on which the learned deputy county court judge could reach the conclusion he did reach, that it was not duly executed as a deed. The papers contain the affidavit, to which Lord Justice Buckley has referred, in which a witness on behalf of the plaintiff swore that on 20 September 1974 the defendant executed a legal charge of the property in favour of the plaintiffs. We do not know whether that affidavit was laid before the learned deputy judge. If it were of course it contained positive evidence of the due execution of the deed. But apart from that the document itself was produced to the court. It describes itself as a deed, as Lord Justice Buckley has observed, because the operative part is introduced with the common form of words 'Now this deed witnessed this as follows'. It contains an attestation

> clause in due form "Signed, sealed and delivered by the above named mortgagor in the presence of", and then it is signed by a witness and it is signed by the first defendant and, as Lord Justice Buckley has pointed out, signed over the very place where there appears the indication that there should be a seal, thus recognising the significance of that part of the instrument. It seems to me that on the evidence before the learned judge it is clear that the first defendant recognised and accepted the document as his deed. Certainly I can see no evidence whatever in which to base a finding that he did not and in my judgment, with all respect to the learned deputy judge, the conclusion which he reaches, is one which cannot be supported".

[13] Then finally from this decision I quote Sir David Cairns on page 229 as follows:

> "I agree that this appeal should be allowed and that the matter should be remitted to the County Court for further hearing. I agree with the reasons that have already been given by Buckley and Goff LJJ for their conclusion. For my part, I would say that even if the first defendant's signature had not been written over the circle containing the letters LS they should have been prepared to hold that the document was a valid deed. In my judgment the present state of the law is accurately stated by Mr Justice Danckwerts in the passage in Stromdale and Ball Limited and Burden which has already been referred to.
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> Moreover, while in 1888 the printed indication of a locus sigilli was regarded as being merely the place where a seal was to be affixed, I have no doubt that it is now regarded by most business people and ordinary members of the public as constituting the seal itself. I am sure that many documents intended by all parties to be deeds are now executed without any further formality than the signature opposite the words 'signed, sealed and delivered', usually in the presence of a witness, and I think it would be lamentable if the validity of documents so executed could be successfully challenged."

I respectfully agree with those comments The Right Honourable Sir David Cairns made in 1978, some 34 years ago.

[14] Finally the [only] case that I think Mr Gibson tried to raise before the Court of Appeal in Northern Ireland, before they understandably remitted the matter to me, is a decision of Sir Nicholas Browne Wilkinson when he was Vice Chancellor and it is T C B Limited v Gray [1986] 1 Ch. 621 and the relevant passages are at 633 and 634 and as the point has now been raised I think for completeness I will quote from them. There the Vice Chancellor had to deal with a power of attorney and he said as follows: "The power of attorney is described as being a general power of attorney made by Mr Gray. It reads" and he sets it out. He sets out it is signed and he sets out that there is no seal or other mark on the document to indicate that it has been sealed, "nor is there any oral evidence to suggest that Mr Gray did anything when executing it beyond signing it. On the contrary, Mr McGuiness said that the lack of a seal or wafer on the document was an oversight on his part. Approaching this evidence on any normal basis I would be unable to find as a fact that anything constituting sealing took place. Indeed, on the ordinary test of balance on the probabilities, I would hold that it did not." Pausing there it can be seen therefore that there was a distinction from the deed, the document which I have to construe, which has in addition '(Seal)' etc. The Vice Chancellor then went on to deal with the case of First National Securities Limited v Jones but he thought it was going too far to apply that case to the case before him but he quoted with approval from both Sir David Cairns, whom I have just quoted from, and from Mr Justice Danckwerts and I will return to his judgment in a moment. So it seems to me that there is strongly persuasive authority for the view that what was required even before 15 November 2005 with regard to unregistered land is a sufficient indication of a seal to constitute a deed. Calling itself a deed at the head of the document is not essential. In my view, and I so find, [for the reasons set out at paragraphs [7], [11] and generally above, including the authorities cited,] that the combination of the words 'Signed, Sealed and Delivered in the presence of' the borrower and the signature of the borrower and the word 'Seal' in brackets immediately thereafter is a sufficient indication of the intention to execute the document as a deed and together constitutes sufficient adoption or recognition of the seal to constitute the due execution of a deed. It is as good as or better than a circle with L.S. in it or a hatched circle.

[15] Now if, for completeness, anyone else took a different view of that point the bank then rely on estoppel. Clearly there is a point here of general public importance given the number of such deeds or documents which are likely to be outstanding. The passage from Sir Nicholas Browne Wilkinson which I was quoting from leads to this conclusion which I find was consistent with the earlier views of Mr Justice Danckwerts and which I propose to follow. Sir Nicholas Brown Wilkinson said at page 634E of T C P Limited and Gray op. cit.:

> "But for myself I prefer to hold that in the ordinary case a person so executing a deed is subsequently estopped from denying that he has sealed it rather

> than to find as a fact that something has occurred which we all know has not occurred."

There is therefore clear authority from two Chancery Judges in England supporting the view that estoppel would apply in any event and so in the alternative I find that the defendant is estopped from denying the enforceability of this deed. In those circumstances I need not go into any other issues such as the enforceability of the mortgage in equity. Therefore my finding on the earlier occasion remains unchanged.