

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

UCB HOMELOANS CORPORATION LIMITED

Plaintiff/Respondent

v

PATRICK JOHN BENNETT

Defendant/Applicant

TREACY J

Introduction

[1] The defendant applicant in these proceedings is Mr Patrick John Bennett, a personal litigant. The plaintiff respondent is represented by Mr Michael Neeson BL.

Background

[2] By a charge dated 17 September 2007 and made between the respondent and applicant, the dwelling house situated at 100 Longfield Road, Mullaghbawn, Newry and contained within Folio 13149 Armagh ("the premises,") were charged by the defendant to secure repayment to the plaintiff of the principal sum of £175,616.00 and payment of interest thereon at the annual rate of 6.09% ("the mortgage"). The charge secured all monies payable by the defendant to the plaintiff and included any further loans or advances.

[3] On foot of numerous defaults in respect of the monthly payments, being contrary to the terms and conditions of the mortgage the plaintiff commenced proceedings, by way of Originating Summons for possession of the premises, in accordance with Order 88 of the Rules of the Supreme Court (Northern Ireland) 1981 ("the Rules"). At the date of issue of the Originating Summons, the plaintiff was in arrears of £4,473.73.

[4] On 16 February 2011 Master Ellison granted the plaintiff an Order for vacant possession of the premises. By a Summons dated 3 February 2012, the applicant sought leave to appeal the decision of the Master out of time.

Time Limit

[5] The Court was furnished with a skeleton argument on behalf of the plaintiff which greatly assisted in bringing focus to what was at issue before the Court. By Notice of Motion, dated 3 February 2012, Mr Bennett has applied for leave to appeal, out of time, the Order of Master Ellison dated 16 February 2011 granting the plaintiff vacant possession of the subject premises. The chronology of events and the plaintiff's understanding of Mr Bennett's application are summarised at paras 4 and 5 of the skeleton argument which I need not and do not propose to repeat.

[6] The appropriate time limit for appealing the Master's decision is found in Order 58 Rule 1(3) of the Rules which, so far as material, provides:

"Unless the court otherwise orders the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal."

This is, of course, subject to the power of the Court to extend time under Order 3 Rule 5 which provides:

"The court may on such terms as it thinks just by order extend or abridge the period within which a person is required or authorised by these rules or by any judgment, order or direction to do any act in any proceedings."

The Law

[7] The applicable principles to which a court will address its mind in determining an application to extend time are well established. The leading authority in this jurisdiction remains the Court of Appeal judgment of Lowry LCJ in *Davis v Northern Ireland Carriers* [1979] NI 19. In that case Lord Lowry held that where a time limit is imposed by rules of court which embody a dispensing power the court must exercise its discretion in each case and the relevant principles are:

- (i) Whether the time is already spent. A court will look more favourably on the application made before the time is up.
- (ii) When the time limit has expired the extent to which the party applying is in default.

- (iii) The effect on the opposite party of granting the application and in particular whether he can be compensated by costs.
- (iv) Whether a hearing on the merits has taken place or would be denied by refusing an extension.
- (v) Whether there is a point of substance to be made which could not otherwise be put forward.
- (vi) Whether the point is of general and not merely particular significance.
- (vii) That the rules of court are there to be observed.

[8] In the course of his judgment Lord Lowry referred to the judgment of Lord Guest in *Ratnam v Cumarasamy* [1965] 1 WLR 8,12 where he said:

“The rules of court must prima facie be obeyed and in order to justify a court in extending time during which some step in procedure requires to be taken there must be *some material* upon which the court can exercise its discretion. If the law were otherwise a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.”[my emphasis].

This is a point which is picked up later in the judgment at p22(d) where Lord Lowry emphasised what he characterised as the “*paramount importance*” of accounting for any delay. The requirement to account for the delay is linked to the consideration that there must be *some material* before the court which would justify it in exercising its discretion to extend time. In the present case there has been no affidavit or material furnished to the court to explain, much less justify, the very considerable delay that there has been in making this application for leave to extend out of time.

[9] The principles in *Davis* have frequently and recently been restated for example in *Lidl v Curley and Kearney* [2002] NICA 16 and in *Benson v Morrow* [2010] NIQB 140. However, standing back and having listened carefully to all the points being advanced, nothing has emerged to make me consider that the interests of justice demand an extension of time in this case, quite the contrary.

[10] Applying the relevant principles the court observes as follows:

- (i) The application is out of time and no reason has been advanced for the period of delay in bringing the application.
- (ii) The extent of the delay in this case is considerable and the plaintiff was correct to characterise the delay on the applicant’s behalf as being inordinate. The time for bringing the appeal expired on 25 February 2011. The application for leave to extend was made on 3 February 2012

and thus the application is 342 days out of time and little, if any, by way of explanation has been advanced for this delay.

- (iii) The effect on the opposite party if the application to extend time is acceded to? The Master in this case made his order for possession on 21 February 2011. It seems reasonable to infer, as has been submitted, that the effect of further litigation would deprive the respondent of the ability to realise its security and would result in further cost. The respondent points out that the nature of the current property market may dictate that any further delay would cause further prejudice to the respondent and that an order for costs would not even, if enforceable, sufficiently compensate in that eventuality.
- (iv) Has there been a hearing on the merits? It is clear that there has in this case been a hearing on the merits before Master Ellison. I am informed that he adjourned the hearing on a number of occasions and considered the material submitted by Mr Bennett and that the grounds, so far as the merits are concerned, that are relied upon by Mr Bennett are substantially the same if not identical to those relied upon before this court.
- (v) Whether there is a point of substance to be made which could not otherwise be put forward. The applicant makes a number of unspecific allegations of fraud, speculative assertions - although it appears that the principal ground upon which he seeks to rely is a suggestion that the plaintiff respondent cannot prove that it is the proper plaintiff in this case. However a copy of the mortgage deed was exhibited to the initial grounding affidavit for the application for possession made before Master Ellison. The various grounds that have been advanced by Mr Bennett were matters which, if he wanted to raise them, and I understand that some of them were raised, the proper forum to do so was before the Master. If he was unhappy with the outcome of the findings that had been made by the Master the proper course for him was to appeal within time. It is obvious that if leave was granted in this case and the matter was to proceed to appeal that the various issues that Mr Bennett would wish to explore are likely to take him absolutely nowhere but to take up a substantial amount of court time and unnecessarily and unjustifiably incur substantial costs.
- (vi) Whether there is a point of general and not merely particular significance. In light of the above it is clear that the points that the applicant would like to advance are by their nature unlikely if not incapable of constituting matters of general as opposed to particular significance.
- (vii) Finally, there is of course the important principle that the rules of court are there to be observed and the importance that the courts attach to the principal of finality.

Conclusion

[11] So for all those reasons and applying the applicable principles and considering in the round what the interests of justice require the applicant has failed to persuade the court that it would be appropriate to accede to the application to extend time and accordingly the application is refused.