



THE HIGH COURT

Record Number 2024/6691

[2025] IEHC

JOHN FOY

Plaintiff

-and-

DAVID O'CONNOR and BCM GLOBAL ASI LIMITED

Defendants

JUDGMENT of Ms Justice Nessa Cahill delivered electronically on 23 July 2025

1. This judgment addresses the Plaintiff's application for an interlocutory injunction to restrain the marketing or advertising for sale, or the sale, of a property at 10-12 Pearse St, Mullingar, Co Westmeath (the "**Property**") pending further order of the court.

BACKGROUND

2. The Plaintiff is the owner of the Property and of the company registered under the name Seven Acres Ltd (the "**Company**") which leases, and operates a drapery business from, the group floor of the Property. There are three residential units above the shop, all of which are also rented by the Company. The Property has been in the Plaintiff's family for a period of some 120 years. Throughout that time the drapery business has been operated at the Property by the Plaintiff's family (laterally through the Company).
3. The Plaintiff acquired the legal and beneficial title of a commercial investment property at Parkcourt, Austin Friars Street, Mullingar ("**Parkcourt**") in November 2004 with the benefit of a loan from Bank of Ireland (the "**Original Loan**"). The vendor was a company owned and controlled by the Plaintiff's father.

4. On 19 February 2014, the Plaintiff entered into a new loan agreement with Bank of Ireland to restructure the Original Loan (a demand facility in the amount of €1,023,000) and to create a new mortgage over the Property (the “**2014 Loan**”). The Plaintiff makes various allegations regarding this 2014 Loan and the circumstances in which it was entered, including that he was “*coerced*” into entering into it; that the Bank acted unfairly; that it was a “*pretence*” to obtain security over the Property; and that there were breaches of the Consumer Credit Act 1995.
5. Interest rate service charges were applied to the 2014 Loan on three occasions in 2017: in the amount of €22,980.13 on 20 November 2017; €22,618.75 on 21 August 2017 and €19,865.73 on 22 May 2017.
6. On or about 17 February 2017, Bank of Ireland appointed KPMG as receivers (although the deed of appointment has not been furnished, so the terms of the appointment are not before me). Bank of Ireland sold the 2014 Loan along with the security over the Property to BCM Global ASI Ltd (“**BCM**”) on or about 6 December 2019.
7. In January 2021, KPMG sold Parkcourt for the price of €600,000. It is the Plaintiff’s position that the purchaser had previously offered to pay a higher sum of €745,500 which KPMG rejected. It is said that the sale was at an undervalue for that reason.
8. On 24 November 2022 BCM appointed the first Defendant as receiver in respect of the Property. There have been two applications by the Company for injunctions to prevent their eviction from the Property by the Defendants. These injunctions were compromised on each occasion.
9. The Plaintiff asserts that he was told by BCM that the outstanding balance on the 2014 Loan was €507,000. The Plaintiff’s position is that KPMG recovered rents in the approximate amount of €250,000 during the receivership, which rent was not reflected in the loan account. The Plaintiff also asserts that not all of the proceeds of sale were credited to the loan account. He estimates that the redemption figure could be less than €200,000.
10. On 7 November 2024 the Plaintiff wrote to the Defendants’ solicitors proposing a redemption figure of €287,000 to redeem the mortgage. The Plaintiff’s position is that this was a correct representation of the balance on the 2014 Loan, deducting the purchase price for Parkcourt and the rent collected in respect of that property from the amount outstanding on the Original Loan. The Plaintiff, through his solicitors, requested an undertaking that the Defendant would not sell the Property.
11. On the same date the First Defendant (Mr. O’Connor) responded by email proposing a purchase price of €570,000. The Plaintiff’s solicitor’s response was that this was unreasonable given the loan balance was €507,000. There were repeated requests for an undertaking not to sell the Property.
12. On 13 November 2024, the Defendants’ solicitor advised that the redemption figure was €652,923 and that if the Plaintiff wishes to redeem the 2014 Loan that is the figure that must be paid, failing which the Defendants “*shall proceed with progressing the sale of the property*”.

THE MOTION

13. On 14 November 2022, these proceedings were issued, in which the Plaintiff seeks damages and injunctive relief. This motion was then issued on 18 November 2024. The relief sought includes an interlocutory injunction restraining the Defendants from marketing and/or advertising for sale, selling or purporting to sell the Property pending further order of this Court.
14. This motion was grounded on the affidavit of the Plaintiff sworn on 14 November 2024, in which the background and complaints summarised above were set out.

Defendants' Affidavit

15. The first Defendant swore a replying affidavit "*on behalf of the defendants*" in which he makes the following points:
16. First, he states that the complaints regarding Bank of Ireland are not relevant to this motion.
17. Second, he states that any issues regarding the appointment of the receiver over Parkcourt are not ones for which the Defendants are responsible and that complaints regarding the sale of that Property are not relevant and can only be maintained against KPMG.
18. Third, as regards the figures outstanding, Mr O'Connor states that €524,408.51 was "*applied from*" Parkcourt to the loan account (comprised of three amounts, €450,000, € 65,587.26 and €8,821.25). What he states is that €450,000 was applied from the proceeds of sale and the other sums (the source of which is not identified) were "*applied*" to the loan account. He was informed by BCM that "*rental proceeds were held with that other receiver to discharge costs which accrued while that appointment was ongoing.*"
19. Fourth, Mr O'Connor states that the injunctions brought by the Company were settled but "*a termination notice remains in place*".
20. The Plaintiff swore a replying affidavit raising questions about the rent collected. He also refers to the service by the Company of a notice of intention to claim relief against forfeiture.

TEST TO APPLY

21. There is and can be no dispute about the correct test to apply in this injunction application. The first, threshold step is that the applicant for injunctive relief must demonstrate that there is a serious issue to be tried. This is a low hurdle and requires only that the claim not be frivolous or vexatious (*Merck Sharp & Dohme v. Clonmel Healthcare* [2019] IESC 65 [30], [2020] 2 IR 1, "*MSD*"). It has been likened to the threshold for the dismissal of a claim pursuant to the inherent jurisdiction of the Court (*Betty Martin Financial Services Limited v. ESB DAC* [2019] IECA 327 ("*Betty Martin Financial Services*"), at para 42).
22. Beyond that, the key question is firmly established by the judgment of the Supreme Court in *MSD* to be whether the balance of justice as between the parties requires the grant of the injunction sought pending the trial of the proceedings.
23. There is no checklist or "*mechanical rules*" (*MSD* para. 34) to apply. Rather, in recognition of "*the essential flexibility of the remedy*" (*MSD* paras. 28, 36), and the objective of finding "*a just*

solution pending the hearing” (MSD para. 34), the overarching imperative is to have regard to the specific facts and matters that arise in each specific application with a view to doing justice between the parties pending trial.

SERIOUS ISSUE TO BE TRIED

24. There were six broad categories of issues identified by the Plaintiff in his affidavit. The first three categories of complaints were not addressed in submissions at the hearing of the application for injunctive relief. I approached the hearing of the application on the express (and uncontradicted) basis they were not being relied upon for the purpose of demonstrating a serious issue to be tried. This includes the complaints that the Plaintiff was coerced by Bank of Ireland into entering the 2014 Loan and granting the mortgage in respect of the Property; that there were failures to comply with his rights as a consumer including under the Consumer Credit Act, 1995; and a complaint about the application of interest surcharges to the account in 2017. The position of the Defendants is that these are matters related to engagement with Bank of Ireland and not BCM. As these points were not pressed in the context of this motion, they are not considered further here.
25. The issues that were relied upon in this motion concerned (a) the alleged sale of Parkcourt at an undervalue; (b) the alleged failure to properly account for rent received; and (c) the lack of transparency with regard to the redemption figure. These will be addressed in turn.

Sale of Parkcourt

26. This claim is based on the fact that the ultimate purchaser of the property had originally made an offer of €740,500 for that property on 11 June 2019, there was an agreement reached on that basis and the matter was “*sale agreed*”, but it was then sold for the sum of €600,000 in January 2021.
27. The position advanced by the Defendants (in the affidavit of Mr O’Connor) is that this issue raised regarding the sale of Parkcourt is irrelevant to this motion and “*is not a matter with which either of the defendants are concerned*”. It is said in written submissions that, if there was a claim in this respect, it is a claim against KPMG. In a letter of 13 November 2024 from the Defendants’ solicitors there is an account of the purchaser’s apparent explanation to KPMG for the price reduction.
28. The Plaintiff challenges as “*false*” the position put forward in correspondence that the purchaser reduced the price owing to maintenance and capital expenditure required on Parkcourt. The Plaintiff asserts that the sale of Parkcourt caused him a loss of €140,500. The Plaintiff also points to a letter from the auctioneer instructed to sell Parkcourt which indicates that the Plaintiff’s concerns and complaints may not be frivolous or unfounded.
29. It is notable that there is no factual evidence proffered by the Defendants to dispute the facts asserted by the Plaintiff. The facts are simply not addressed on affidavit by the Defendants. The only affidavit was sworn by Mr O’Connor who was appointed after the sale had closed and has no means of knowledge regarding it. The height of his response on this point is that it is “*not relevant*”. What is said in legal submissions by the Defendants is that, if there is a claim in this respect, it is a claim against KPMG.

30. I do not believe that the price reduction *of itself* is a sufficient basis to form a view that the sale was not at the best price reasonably obtainable at the time the sale took place. However, when viewed in light of the surrounding circumstances, including the absence of any explanation as to why the sale did not take place for approximately 18 months beyond the date when the higher offer was made, there does appear to be a potential, non-vexatious issue with regard to the price obtained for the sale of Parkcourt.
31. However, the decision as to whether this is a serious issue for the purpose of this motion hinges on the absence of KPMG as a party to the proceedings.
32. In answer to this contention, the Plaintiff points out that the loan was sold to BCM in 2019 and the sale of Parkcourt occurred in 2021. It was therefore a sale by BCM and rents were collected while BCM was the chargeholder. He also contends in his second affidavit that BCM took over the 2014 Loan and the mortgage and must be liable to account for monies that should have been applied to that loan balance and the Defendants cannot “*wash their hands of any responsibility*” for how their predecessor conducted and managed matters. It is also noted in the Plaintiff’s second affidavit that it may be necessary to join KPMG as a co-defendant to the proceedings and that this was “*under active consideration*”.
33. The question that must be asked is whether the issue sought to be agitated is frivolous or vexatious. I do not think the Plaintiff’s concerns about the sale of Parkcourt fall into that category from the facts as presented to me and summarised above. The real question is whether KPMG must be a party to the case for the issue to be regarded as a serious one. While it is undeniable that the Defendants and not KPMG are the correct respondents to this motion, the Plaintiff bears the onus of demonstrating a fair issue to be tried as against the Defendants. He has not disputed that the sale process was overseen, managed and conducted by KPMG. Even if there is a serious issue to be tried regarding that process, it is an issue to be tried primarily against KPMG. With some reluctance, I do not believe it has been shown that there is a serious issue to be tried *as against the Defendants* with regard to the sale price obtained for Parkcourt. I do not believe the indication that the Plaintiff may apply to join KPMG as a defendant to the proceedings cures this difficulty: rather, it indicates an acknowledgement that KPMG must be a counter-party to such a challenge.

Rental Income

34. The Plaintiff asserts that the rental income from Parkcourt was €62,600 per annum. He claims that the receivers collected rents from 17 February 2017 until the sale of that property on 29 January 2021, a period of 48 months. His estimate is that the receivers collected approximately €250,000 in rent during that time and he asserts that none of this rental income was credited to his loan account. The figures he put forward were not contradicted on affidavit by the Defendants. However, the Plaintiff himself notes in his affidavit that one of the tenants ceased trading towards the end of 2019 and that the rent payable by this tenant was in the amount of €22,000 per annum. It is unclear whether that fact is reflected in the estimated rental figure of €250,000 but some reduction to that figure may be warranted.
35. The Defendants’ position is that rental proceeds from Parkcourt “*were held with*” KPMG “*to discharge costs which accrued while that appointment was ongoing*” (Mr O’Connor’s affidavit, para. 6) and that any claim that arose was against KPMG. It was fairly said that the matter could not be put further than that.

36. Taking the contention that the rent was “*held with*” KPMG, this does not wholly match what was said in the letter from the solicitors acting for the Defendants of 13 November 2024 which states “*the net proceeds together with rental income were remitted to the chargeholder*”. There is therefore a distinct lack of clarity or consistency in the information provided by the Defendants regarding the treatment of the rent received from the tenants of Parkcourt.
37. It is also unclear how much monies were applied to the loan account from that rental income; how the amounts were computed; and what deductions were applied. In his affidavit, Mr O’Connor states that “*the second named defendant has informed me that a total of €524,408.51 was applied from that property [Parkcourt] to the plaintiff’s loan account*” (emphasis added). He exhibits a statement of account dated 6 December 2024. The statement that the monies were “*from*” the Property is vague and it may be noted that Mr O’Connor was not appointed until shortly after the last of the three tranches that make up that figure was deposited to the account on 10 November 2022. He can have no means of knowledge of same and there is no deponent on behalf of BCM. There is therefore no explanation before the Court as to what the figures deposited to the loan account up to 10 November 2022 (almost 2 years after the sale of the Property) relate to.
38. The only transactions after 10 November 2022 (according to the account statement furnished by the Defendants) are three deposits amounting to €50,000 which were remitted between December 2023 and September 2024. It appears from the letter of 13 November 2024 that this is rental income from the Property, but there is no confirmation of this on affidavit. What is said in the letter of 13 November 2024 is that rental income received from the Company for the Property was in the amount of €60,000 of which €50,000 was “*remitted to the chargeholder with the balance covering costs associated with the property*”. That letter also states that “*the net proceeds together with rental income were remitted to the chargeholder*” (when discussing the sale of Parkcourt).
39. On the basis of the evidence presented to me, it is simply not possible to discern what rental income was received in respect of Parkcourt, what amounts were remitted to the loan account from that income and what role BCM had regarding same. The correspondence squarely points to BCM (and its predecessor) having received those monies, but there is no explanation for the monies deposited to the loan account or how they relate to the rent in fact received.
40. The Plaintiff has raised a fair issue regarding the failure to provide proper accounts of rental income received in respect of Parkcourt or explanations as to the sums collected and remitted to the loan account. Neither the affidavit nor the submissions relied upon by the Defendants demonstrate a reason to find otherwise at this interlocutory stage. Indeed, the Defendants fairly accepted in submissions that a mortgagee has an obligation to provide a proper breakdown of the figures reflected in a loan account. On the basis of the evidence before me, the Plaintiff’s case on this point meets the low threshold of a fair issue to be tried.

Redemption

41. The Plaintiff has decided that he wishes to redeem the mortgage to protect the long-term interests of the Company and calculated the correct outstanding loan figure – and the correct redemption figure - as €287,000. There is asserted to be a serious issue about the figures being relied upon by the Defendants.

42. According to a BCM global statement of accounts dated 6 December 2024 the balance that remains outstanding on the loan account is €507,612.17 and the redemption figure sought by the Defendants is €652,923.
43. The Plaintiff's position is that the full proceeds of sale – and the full rental income - of Parkcourt were not credited to his loan account. A letter received from the defendants' solicitor on 13 November 2024 states that that “*the net proceeds together with rental income were remitted to the chargeholder*”. The Plaintiff states that this explanation was unsatisfactory and that no details have been provided regarding the deductions made from the sale proceeds.
44. The position advanced by the Plaintiff is that, if the breakdown of the redemption figures (including rent received) are withheld, it is impossible for the Plaintiff to make a decision about the exercise of the equity of redemption. It is said that there is therefore a serious issue regarding the existence of a clog on the equity of redemption. It is claimed that the Plaintiff would be entitled to a permanent injunction on that basis.
45. The Plaintiff points to section 103 of the Land and Conveyancing Law Reform Act 2009, which provides as follows:
- “(1) In the exercise of the power of sale conferred by this Chapter or any express power of sale, the mortgagee, or any receiver or other person appointed by the mortgagee, shall, notwithstanding any stipulation to the contrary in the mortgage, ensure as far as is reasonably practicable that the mortgaged property is sold at the best price reasonably obtainable.*
- (2) Within 28 days after completion of the sale, the mortgagee shall serve a notice in the prescribed form on the mortgagor containing information relating to the sale.*
- (3) A mortgagee who, without reasonable cause, is in breach of the obligation imposed by subsection (2) is guilty of an offence.”*
46. It is said that there was no evidence that a notice was served by BCM under section 103(2) following the sale of Parkcourt.
47. There was no answer to these points in the affidavit sworn by Mr O'Connor. He relays the information given to him by BCM regarding the deposits to the loan account but there was no attempt to properly explain the figures or the deductions made. There is also no explanation by BCM itself as to the monies it received and no explanation for its failure to furnish evidence. In submissions, the Defendants did not dispute the proposition that a mortgagee is obliged to provide a proper breakdown of the figures owed and how they are calculated.
48. I am satisfied that there is an overarching issue about a lack of transparency in the fees, costs and charges which have been applied and deducted from the monies received from the sale and rent of Parkcourt (and, to a lesser extent, the Property). The Plaintiff asserts that the Defendants have failed to comply with the duty to properly account for the sums charged and alleged to be outstanding and this undermines the ability of the Plaintiff to exercise the equity of redemption, as the redemption figures cannot be understood or explained (even by the Defendants, apparently).

49. I agree with the Plaintiff that no proper account was put before the Court regarding the application of the proceeds of sale of Parkcourt or the rents received from either Parkcourt or the Property; that there is no explanation for this failure; and that it does point towards a breach of duty on the part of the Defendants.
50. The available evidence suggests there have been very significant deductions already made from the proceeds of sale and the rental income received to date. The fact that round figures of €450,000, €20,000, €25,000 and €5,000 were credited to the account, and remittals were made in November 2022, almost two years after the sale of Parkcourt, require explanation and detailed accounts need to be furnished. These are not charges by way of interest. It appears from the account statements exhibited Mr Foy's affidavit that interest was charged until 2018, but the statement of account furnished by Mr O'Connor dated 6 December 2024 states that "*the balance does not include accrued interest not yet charged to the account in the amount of 0*". This clearly confirms that there is no accrued interest.
51. The letter of 13 November 2024 does not explain the deductions previously made and instead states that further unidentified "*receivership and legal costs*" are being added to the loan figures, bringing the redemption figure from the outstanding loan balance of € 507,612.17 to the figure of €652,923. The additional costs now being levied on the Plaintiff amount to €145,310.83. It is wholly unclear what it relates to, but it is directly relevant to the exercise of the equity of redemption, and needs to be explained.
52. What is said by the Defendant is that there is no reference to redemption in the plenary summons and there have no repayments on the loan. I do not accept that these points undermine the sufficiency of the issue raised: there is no evidence from the Defendants regarding the repayment history on the loan and a permanent injunction is sought which would serve to allow the exercise of the equity of redemption. The statement of claim is yet to be delivered.
53. The Defendants rely on *Ewins v. Promontoria Scariff DAC* [2024] IEHC 556 ("**Ewins**") as an example of a case in which an injunction to allow the exercise of the equity of redemption was refused. The salient distinction is that, in *Ewins*, it was claimed that the equity of redemption had been exercised before an auction of the mortgaged property took place, but there was an issue raised on the evidence as to whether there was a *bona fide* attempt to exercise of that right. No such question arises here. The facts are quite distinct and I consider that the Plaintiff has raised a fair issue in this respect. The Defendants also rely on *Ewins* to show that issues regarding equities of redemption can be dealt with at trial and do not necessitate injunctions. However, the facts of *Ewins* are different in a highly significant respect: there, there was no apparent dispute with regard to the redemption figure. The issue was whether the plaintiff had in fact repaid the outstanding balance (as opposed to having offered to repay it). It is not authority for the refusal of the injunction sought by the Plaintiff here.
54. The Plaintiff's evidence and the limited documentation and evidence furnished by the Defendants shows that there have been significant and unexplained deductions from the proceeds of sale of Parkcourt, the rental income from Parkcourt and (to a lesser extent) the rental income from the Property. Despite €600,000 having been obtained from the sale of Parkcourt, for example, it appears that the round figure of €450,000 was remitted to the loan account (although there is no evidence from the Defendants to confirm or clarify this). It falls to BCM to explain the amount remitted, but this has not been done, and there is a fair issue

identified regarding BCM's compliance with section 103 of the 2009 Act. The imposition of a further charge in the amount of €145,310.83 to allow the Plaintiff to redeem the mortgage also requires explanation.

55. I am satisfied that there is a serious issue to be tried as regards the redemption figure that has been furnished to the Plaintiff, how it is calculated, and the deductions that have been made to arrive at it. There is also a serious issue as regards the absence of any account or notice to the Plaintiff setting out or explaining the relevant figures. I am satisfied that there is a fair issue to be tried as to whether these matters are also obstacles to the ability of the Plaintiff to exercise the equity of redemption.

BALANCE OF JUSTICE

Parties' Positions

56. The Plaintiff's case is that the Property has been in the family for 120 years and his family has for generations operated a drapery business there (laterally through the Company). It is said that the Plaintiff wants to exercise the equity of redemption and recover full ownership of the Property to protect that family business.
57. The Defendants assert the question of the sale of Parkcourt raises issues of financial loss only. They point to the exceptionality of receiver injunctions, relying heavily on the judgment of Murray J. (Faherty and Haughton JJ. concurring) in *Ryan v. Dengrove* [2021] IECA 38 in which the following observations were made:

“Applications for such injunctions – in this instance restraining the appointment by a creditor of a receiver and/or the undertaking by the receiver of one or more actions vis a vis secured assets – are not uncommon. Where arising in the context of commercial loans secured by commercial assets, they are often refused. In such disputes, damages will generally be an adequate remedy, and the appointing institution and/or receiver will frequently be good for any award made against them. Generally in a purely commercial dispute of this kind where the parties' interests are exclusively financial, the law adopts the position that they are best left to their respective remedies in damages. The cases of this kind in which there is a particular factor tilting the balance in favour of the claimant such as would justify the making of orders restricting the creditor's freedom of action pursuant to agreed security instruments, tend to be the exception.” (para. 1)

58. It is asserted that it is difficult to see how a permanent injunction could be granted to prevent the sale of the property by Mr O'Connor. Emphasis was placed – both in the affidavit of Mr O'Connor and in written and oral submissions - on the fact that there is no challenge to the validity of the loan, the loan transfer, or the appointment of Mr O'Connor. The Defendants assert that the mortgagee has a right to enforce the mortgage by the sale of the Property
59. It was said that the issues were fundamentally financial in nature and did not justify interference with the right of the creditor to realise the security in the Property by undertaking the sale of that asset. It was said that no irremediable loss would be suffered by the Plaintiff and that, even if there was an argument about the balance owed on the loan, this did not justify the Court affording priority to the rights of the Plaintiff.

60. The Defendants contend that there was only bare assertion of a family connection with the Property which was too tenuous to render damages an inadequate remedy. It was also said that the sale of the Property would not affect the drapery business carried out by the Company, as the tenants could continue in situ with a new owner. The conclusion of the Defendants was that the Plaintiff would be in no worse a position if the Property was sold.
61. The Plaintiff disputes the proposition that the sale would have no impact on the tenants, pointing to the notice of termination (which Mr O'Connor has confirmed is in place) and the approach taken by the Defendants to date.

Decision on Balance of Justice

62. There is a significant difference between property which is held for purely and exclusively commercial purposes and property to which there is a long-standing inter-generational personal attachment, as in this case.
63. The property at issue in *Ryan v. Dengrove* fell firmly within the former category:

“This case is thus now about ways, means and money – whether and if so how Mr. Ryan gets the property, whether and if so how Dengrove disposes of it, who pays who and who gets what. It is not about the inherent value of the property rights of either party and I do not believe that in the particular circumstances of this case the invocation of those rights affects the analysis.” (para. 90)

64. The judgment of Murray J. in that case carefully emphasised the approach that is typically taken to injunctions involving commercial properties:

*“...the authorities show that in ‘receiver-injunction’ cases involving commercial properties (and I stress the latter part of that description) the position is often adopted that in a dispute between an undertaking that has borrowed monies for wholly commercial purposes, and a secured lender who has obtained as a condition of that borrowing security over wholly commercial assets, the dispute is a commercial one, and the remedy for breach by either party of their obligations under those arrangements sounds in damages (see *Camden Street Investments Ltd. & ors v. Vanguard Property Finance Ltd.* [2013] IEHC 478, *Kinsella & ors v. Wallace & ors* [2013] IEHC 112, *O’Gara & anor. v. Ulster Bank Ireland DAC & anor* [2019] IEHC 213, *Murphy v. McKeown* [2020] IECA 75).”* (para. 62)

65. The question of property rights and the value of the equity of redemption were also addressed by Murray J. in *Ryan v. Dengrove*:

*“In principle, the case law is clear in positing both the appropriateness of the Court taking account of the inherent value of a property right in determining whether to grant an interlocutory injunction (see *Allied Irish Banks plc. and ors. v. Diamond and ors* at para. 96) and in recognising that the equity of redemption is itself a valuable asset which precludes the mortgagee from simply selling the property for what it can obtain in the short term (*Dellway Investments Ltd. and ors v. National Asset Management Agency and ors* [2011] IESC 4, [2011] 4 IR 1 at para. 174). However, it is easy to lapse into enthusiastic rhetoric around the vindication of property rights, while overlooking*

the complexity sometimes attending their application.... A home, or property otherwise held to a particular and personal end, or ... assets in which a person has an emotional investment (as was the case in Betty Martin) may not fall to be treated in the same way as secured assets that are used only for business purposes (see O'Gara v. Ulster Bank at para. 59)." (para. 84)

66. This passage points to the different treatment that may be afforded to properties to which there is an emotional attachment, a point which was emphasised in *Betty Martin Financial Services*. That case concerned an application to restrain the termination by the EBS of a number of tied agency agreements and to restrain the taking of any steps on foot of a notice of termination that had been served by the EBS, pending the trial of the action. The injunction was granted by the High Court and the appeal against this decision was rejected by the Court of Appeal. Delivering the judgment of the Court (Whelan and McGovern JJ. concurring), Collins J. weighed as an important factor in the balance of justice the fact that the business at issue was “*in substance, a family business*”:

“In this context, it is also relevant that there is, in my opinion, prima facie plausible evidence before the Court that the Agent's business is, in substance, a family business in which Mr Martin and his sister have a particular emotional/familial investment given the circumstances in which the business was first developed by their mother and her apparent pioneering role as the first woman to be appointed as a branch agent by the EBS in Ireland. The position disclosed by the evidence here is, it seems to me, materially different to the position in O' Gara v Ulster Bank Ireland DAC where, on the evidence before him, Barniville J concluded that the assets at issue were effectively purely commercial assets without any special feature or emotional attachment for the plaintiffs. I do not think the evidence before this Court leads to that conclusion here. The Judge attached considerable weight to this factor and in my opinion he was entitled to do so.” (para. 92)

67. The Court concluded that

“the interests that the Agent is seeking to vindicate in these proceedings extend beyond the purely financial and, in my view, there is a very real risk that, if the injunctions granted by the High Court were to be discharged, and if the Agent is successful at trial, an award of damages at trial in respect of the intervening period will not adequately vindicate those interests.” (para. 93)

68. This judgment is relied upon by the Plaintiff here, and to good effect. It provides resounding confirmation that properties to which there is an emotional or family connection are not to be treated as purely commercial investments. This does not translate into an automatic entitlement to an injunction, but indicates there is value and weight to be attached to such personal, emotional considerations in the balance of justice.
69. In this case, it is true that the averments regarding non-financial harm are not extensive, but I do not consider elaboration to be necessary. The simple undisputed fact is that there has been a drapery business operated at this Property by successive generations of the Plaintiff's family (including through the Company owned by the Plaintiff). There can be no question of categorising a loss of that connection as solely financial in nature. It is not just about bricks and mortar or money for the Plaintiff.

70. Turning to the Defendants' perspective, there is a clear desire to sell the Property and clear the loan, and BCM has rights with regard to the enforcement of its security. However, there is no evidence before me of any interest on the part of BCM or Mr O'Connor which is other than financial in nature or which competes – ably or otherwise - with the long-standing, personal, emotional connection the Plaintiff has with the Property. I do not see how, in the short term, the Defendants' interests can counter-balance the position of the Plaintiff and his connection to the Property, particularly given the existence of a fair issue to be tried regarding BCM's failure to ensure the Plaintiff is given a proper and detailed breakdown of his account or of deductions made to income and receipts from the two properties.
71. I reject the contention that the existing tenants would be left in occupation of the Property and no harm would be caused: the affidavit of Mr O'Connor acknowledges that the termination notice has been issued to the Company and remains in place.
72. However, I need to determine a significant countervailing argument that is advanced by the Defendants. It is said that a court would not grant a permanent injunction in this case. In *MSD*, O'Donnell CJ does raise this as a factor (para. 65(1)), and it is repeated more recently in *H. A. O'Neil Limited v Unite the Union* [2024] IESC 8:
- “It is a basic test for the grant of an interlocutory injunction that the case is one which if the plaintiff were to succeed at trial a permanent injunction would be granted.”* (para 39, per O'Donnell J).
73. The Defendants contend that, as there is no challenge to the validity of the loans or mortgages or the appointment of the Receiver, there is no prospect of the grant of a permanent injunction. I do not quite agree. As matters stand, it is not possible for the Plaintiff or the Court to understand the deductions that have apparently been applied to sums recovered from Parkcourt and the Property. It is currently not possible to understand or identify the sum that is properly owing to enable the Plaintiff to exercise the equity of redemption. If the Defendants refuse to provide any further information, breakdown or accounts, I consider it likely that a court would grant a permanent injunction to prevent the sale of the Property (without of course prejudging the merits of the substantive case, which is a matter for trial).
74. However, it is relatively clear to me that this case does not fit comfortably or easily within the mould of other property injunctions. If a full and proper account of the figures is furnished and no attempt is then made to exercise the equity of redemption, a court may not – in those changed circumstances - grant or continue any injunction. For that reason, I consider that the most fair and just balance to strike in this case would be to grant the injunction, but with express liberty to apply. This would encompass any application the Defendants may wish to make in the event that detailed accounts are furnished to the Plaintiff and the mortgage remains unredeemed. I do not express any view on the merits of, or seek to prejudge, any such application.
75. A final matter to consider is the undertaking as to damages. The Defendants contested the adequacy of the undertaking as to damages, pointing out that, while there was equity in the Property, the sum of money owed was substantial and it was unclear how the undertaking was to be realised. The undertaking is said by Mr O'Connor to be “*of no worth*”. It was also said that the longer the loan remained outstanding, the greater it was (although given the non-charging of interest, this position is difficult to understand). The Plaintiff's response is that

there is considerable equity in the Property and that there is no real challenge to the sufficiency of his undertaking.

76. The Defendants have proffered no reason to believe the value of the Property will depreciate in the short term or that there is any difficulty with the ongoing collection of rents from its tenants. In addition, the Plaintiff has made an offer to redeem the mortgage, and there is no reason to believe he is not in funds to do so (certainly no such question has been raised by the Defendants). There is equity in the Property and a serious issue has been raised regarding the balance and breakdown of the loan account. In these circumstances, I am satisfied with the sufficiency of the undertaking provided by the Plaintiff.
77. I would however emphasise that the injunction is an interlocutory one only and the onus rests firmly on the Plaintiff to bring these proceedings to trial and to conclusion without delay.

CONCLUSIONS

78. For the reasons given in this judgment, I am satisfied that there are serious issues raised for the purpose of meeting the low threshold for the grant of an interlocutory injunction. It has also been demonstrated to my satisfaction that damages would not be an adequate remedy for the Plaintiff if he lost the Property with which he has a long-standing personal familial connection. By contrast, the only interest of the Defendants is financial. I am also satisfied that it is necessary to weigh the property rights of the Plaintiff in the Property and in the equity of redemption, as part of the balance of justice. Another factor of some relevance here, is the conduct of the Defendants, including the failure of BCM to present any affidavit evidence regarding the remittals made to the loan account or any breakdown or clarity as regards the loan or redemption figures supplied to the Plaintiff. For these reasons, I am satisfied that it is appropriate to grant an interlocutory injunction to prevent the sale or advertising or marketing for sale of the Property.
79. I therefore grant the injunction as sought, but with express liberty to apply in the event that the facts that ground this application should change.
80. As the Plaintiff has been fully successful in obtaining the order sought, I am of the provisional view that costs should be awarded in favour of the Plaintiff. If the Defendants wish to contend for a different costs order, they have leave to deliver a written submission of no more than 1,000 words in length by 19 September 2025; the Plaintiff then has leave to deliver a replying written submission (of the same length) by 3 October 2025, and I will list the matter before me at 10.30am on 8 October 2025 for the purpose of hearing submissions in relation to costs and making final orders.