



November 2018

Tanager v Kane – Court of Appeal Judgment

Introduction

Following the decision in the Circuit Court and the interim ruling in the High Court on appeal, the Court of Appeal delivered a judgment on 31 October 2018 in relation to certain questions of law that had been case stated from the High Court owing to matters of public interest which this case raised. For determination were certain questions arising from the refusal of the Circuit Court to grant an order for possession over the defendant's family home to Tanager DAC (**Tanager**), the acquirer of the loan and security over the property from Bank of Scotland plc (**BOS**).

Background

Following the 2010 cross-border merger between Bank of Scotland (Ireland) Limited (**BOSI**) and BOS, the charge over Mr Kane's family home was acquired by BOS. BOS then sold a portfolio of its loans and related security to Tanager before BOS had been registered as owner of the charge on the folio that comprised Mr Kane's home. As the merger and transfer of business from BOSI to BOS had taken effect by operation of law, no application was submitted to the Property Registration Authority of Ireland in respect of the transfer to BOS. Following the portfolio sale Tanager was registered as the owner of the charge before commencing its possession proceedings against Mr Kane.

The Circuit Court Decision

The Circuit Court dismissed Tanager's application for possession on the basis that because BOS never became the registered owner of

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the charge on the folio, it was not entitled to transfer the charge to Tanager. The folio showed the BOSI charge as registered and recited Tanager as the new owner of the BOSI charge with no reference to BOS.

▣ The High Court Decision¹

In the High Court, Mr Justice Noonan, in his interim ruling, identified that Mr Kane had raised a legitimate question as to the validity of the transfer of a charge from an entity which is entitled to be the registered charge holder, but was not in fact registered on the date of transmission (BOS in this instance) to the new owner (Tanager). He also suggested that if it transpired that the bulk registrations that occurred after the loan sale process from BOS to Tanager were a mistake, this could undermine the conclusiveness of the folios upon which Tanager relies as registration for its security. Given the seriousness of the questions posed, Noonan J requested that either party should request him to state a case to the Court of Appeal. This request was made by Tanager.

▣ The Court of Appeal Decision²

In the Court of Appeal, Ms Justice Baker (with whom Mr Justice Peart and Ms Justice Whelan concurred) held that under the relevant provisions of the Registration of Title 1964 Act (the **1964 Act**), BOS, as the party entitled to be registered as the owner of the charge on the folio, was entitled to pass that interest to Tanager without first having to be registered as owner on the folio. In so finding she also held that Mr Kane had no grounds to challenge the conclusiveness of the folio which evidenced Tanager as being validly registered as owner of the charge securing Mr. Kane's family home.

In reaching her decision Ms Justice Baker also noted that under the 1964 Act there were certain powers and rights exercisable by a charge-holder which did require registration, however she found that in the circumstance upon which the business of BOSI had merged with and transferred to BOS, the entitlement of BOS to pass its interest to Tanager was not one of them.

▣ Conclusion

Having been given judgment on the questions which had been referred to the Court of Appeal by way of case stated, it is now a matter for the High Court to determine the appeal of the original Circuit Court decision.

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¹ *Tanager DAC v Rolf Kane* [2017] IEHC 697

² *Tanager DAC v Kane* [Appeal No. 2018/29]

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