

Banking

Bank Charges on Property

Bank Charges on Property

A change to the law for registration against after acquired property

Standard bank security documents contain a clause creating security over real property acquired after the date of the charge. It was generally understood that another step was necessary, namely the execution of a further charge identifying the particular property, in order for the charge to be registered against the title of the after acquired property. A recent unapproved High Court judgment has the effect of rendering additional deeds of charge unnecessary.

This case involved an appeal by Anglo Irish Bank Corporation Limited (now Irish Bank Resolution Corporation Limited (In Special Liquidation) (“**IBRC**”)) under Section 19 (1) of the Registration of Title Act 1964 (the “**Act**”) to the decision of the Property Registration Authority (“**PRA**”) on 29 October 2010 to refuse to register IBRC as the owner of a charge on folio CK17018L (the “**Folio**”).

The charge in question contained an after acquired property charging clause. This clause provided for the charging by way of first fixed charge of all other lands which Kilquane Limited (“**Kilquane**”) may acquire at any time after the date of the mortgage. Kilquane acquired the lands comprised in the Folio after the date of the charge.

The PRA refused to register the charge on the Folio on the grounds that Kilquane was “...neither the registered owner nor entitled to be registered as owner of the Folio at the date of the execution of the mortgage...”

The court held that the charge set out in the after acquired property clause carried with it the right to register the charge under the Act on the Folio.

Justice Abbott in rejecting the PRA’s argument that as Kilquane was not the registered owner of the Folio on the date of the charge and hence the charge was not created by the registered owner concluded that “...the operative time for considering whether the mortgagee or chargee was the registered owner is when the chargor...presents the documentation to the registrar for registration, which in this case was after the acquisition of the after acquired property...”

Justice Abbott discussed “...expanding the sub-rules relating to the types of instruments of charge...” and suggested that the PRA should consider an additional form, to accompany the standard registration form on an application for registration, which would set out sufficient information to enable the registrar to ascertain that a specific mortgage executed over after acquired property is not required for the purpose of future registration against an after acquired property and that the failure to rely on a specific charge over lands is *bona fide* and in no way questionable.

IBRC’s position in refusing to avail of the provisions of the further assurance and power of attorney clauses contained in the charge to execute a further specific charge over the Folio was queried by counsel for the PRA. Justice Abbott held that this did not preclude the course being pursued by IBRC.

As a result of this judgment, it appears that the holder of security containing an after acquired property charging clause does not require a further deed to be executed by the mortgagor in order for the charge to be registered in the Land Registry against after acquired property.

This is a significant change relating to the registration of after acquired property charges and its effect could be beneficial to charge holders particularly in cases where, for whatever reason, a supplemental charge would not have been readily executed by the mortgagor or under the power of attorney. We understand that the PRA may appeal the decision.

For further information on this topic please contact Laura MacDermott, Partner, Banking Group
E: lmacdermott@efc.ie