

Banking

Repossessions – Lenders' Rights to be Restored

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Under pressure from the Troika, and with a constitutional challenge pending hearing, the Government published the Land and Conveyancing Law Reform Bill 2013 (the “2013 Bill”) ahead of the end of March 2013 deadline imposed by the Troika. This rectifying legislation is necessary to reverse some unintended consequences of the repeal of certain provisions of other statutes by the Land and Conveyancing Law Reform Act 2009 (the “2009 Act”). That repeal currently has the effect of restricting lending institutions in certain cases from exercising their repossession rights.

The 2013 Bill provides that certain statutory provisions that were repealed by the 2009 Act apply to mortgages created before the entry into force of that Act.

The issue...In *Start Mortgages & Ors v Gunn & Ors*, Justice Dunne dealt with an application challenging possession proceedings brought on a summary basis under Section 62(7) of the Registration of Title Act, 1964 (the “1964 Act”). The 1964 Act allowed banks to apply for summary possession “*when repayment of the principal monies secured by the instrument of charge has become due...*”. Section 62(7) of the 1964 Act was repealed by the 2009 Act and it was therefore argued that the provisions of the 1964 Act were no longer available to the bank. Judge Dunne ruled that, because the loans in question had not been demanded prior to 1 December 2009, the monies had not “*become due*” before the repeal and, therefore, the right to apply for a summary order was lost when the relevant section of the 1964 Act was repealed. The decision in *Start Mortgages* is currently under appeal to the Supreme Court.

Concerns on related issues arising from this decision have already been significantly allayed by a series of subsequent judgments so that the only substantial problem which remains is that it is not possible for a mortgagee to apply to court on a summary basis for possession of land the title to which is registered in the Land Registry, as opposed to the Registry of Deeds.

Prior to these judgments there was a concern that the reasoning applied by the Court in *Start Mortgages* could be applied by the Courts in relation to other provisions repealed by the 2009 Act, such as the section of the Conveyancing Act 1881 granting a statutory power to appoint a receiver.

This rectifying legislation is intended to allow banks to exercise rights that already existed for pre 2009 Act mortgages but which cannot be enforced at present because of the unintended gap created by the repeals in the 2009 Act. Clarity will be required in respect of the effect of this curative or remedial legislation in proceedings for possession already under way and standing adjourned prior to its enactment.

The 2013 Bill also contains provisions that in any repossession proceedings for a person's principal private residence, the court may adjourn the proceedings in order to facilitate the making of a proposal for a personal insolvency arrangement as an alternative to repossession.

The Government's delay in publishing the 2013 Bill apparently was connected with the prioritisation of the Personal Insolvency Act 2013, the commencement of which is expected this summer.

The 2013 Bill is due to move to the second stage in the Dáil towards the end of April 2013.

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