

CIVIL PROCEDURE

Offer letter – Agreed terms – Default in payment – Letter of Demand – Right to enforce security upon default – Appointment of receiver – Meaning of “close of business” – Whether security may be enforced by close of business upon default

McCann v Halpin & another

[2016] IESC 11, Supreme Court of Ireland

Facts The appellants were directors of two companies, Elektron and Crossplan (“the Companies”) respectively while the respondent was a receiver (“the Receiver”) appointed by the Irish Bank Resolution Corporation Limited (“the Bank”). Sometime in 1998, Elektron took a loan (“the Loan”) with the Irish Nationwide Building Society (“the Society”), which was subsequently succeeded by the Bank. Elektron mortgaged a property as security for the loan. Under the terms of the Offer Letter, the Companies shall authorise the Bank to appoint a receiver to enforce the security when the monies become payable. In 2012, Elektron defaulted in repayment resulting in the issuance of a letter of demand (“the Letter”) by the Bank to the appellants seeking payment. According to the letter, the Bank would enforce the security if payment was not received by close of business on 17 February 2012. Payment however was not made and the respondent Receiver was appointed at 4pm on the same day. The appellants challenged the validity of the respondent’s appointment at the High Court, on the basis that the Receiver should have been appointed after 4pm. However, the High Court decided that the appointment of respondent as a Receiver on 17 February 2002 at 4pm was valid. Aggrieved, the appellants appealed.

Issues The issues to be decided were (i) the meaning of “by close of business” on 17 February 2012 and (ii) whether the appointment of receiver at 4pm on 17 February 2012 was valid.

Held In dismissing the appeal and reinstating the ruling of the High Court, the Supreme Court ruled that “close of business” must be given its ordinary meaning in the context in which the phrase is employed. In the present case, it refers to the end of a banking business day where the relevant bank ceases to do business with its customer, which was at the stroke of 4pm. Thus, applying the ordinary meaning of the phrase “by close of business”, payment demanded was due by 4pm and that the Bank, upon the default of payment by that time, was entitled to enforce the security. Hence, the receiver’s appointment at 4pm on 17 February 2012 was valid.