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Ireland's NAMA Survives McKillen Legal Challenge

By Finbarr Flynn – 1 November 2010

Irish real-estate investor Paddy McKillen today lost a legal challenge to Ireland's National Asset Management Agency, set up to absorb risky loans, to block the transfer of his debt to the agency.

The legislation underpinning NAMA represented a "proportionate response to the very grave financial situation in which the state finds itself and which has particular relevance to financial institutions," said Irish high court president Justice Nicholas Kearns in Dublin today. McKillen's case "fails" on the grounds presented, he said.

The case threatened to undermine the government's plan for revamping its banking system and regaining investor confidence. The court ruled today it doesn't need to have regard for the status of a loan, rebuffing McKillen's claim that his loans are performing and should not be transferred to NAMA.

The decision is "welcome in terms of reducing any uncertainty about the future of NAMA and its plans for dealing with the impaired bank assets," Conor Houlihan, a partner with Dillon Eustace, a law firm specializing in financial services, said in a statement. The result is important for keeping "investors whose capital and expertise may play an important role in Ireland's recovery," he said.

Bono, Claridge's

Belfast-born entrepreneur McKillen, who got his start in Dublin, invested in five-star London hotels as well as Dublin shopping centers and the Clarence Hotel on the River Liffey, where Bono and The Edge of rock band U2 are co-owners, before making a foray to the U.S. in 2006. Part of McKillen's debt relates to Maybourne Hotels, operator of London's luxury Claridge's, the Dublin-based Irish Times reported Oct. 30.

McKillen's lawyers plan to tell the high court on Nov. 5 if they wish to appeal the case, a spokeswoman for McKillen said today. Maybourne Hotels is in the "final stages" of refinancing its debt, ahead of the December deadline, she said.

NAMA was established as Ireland's "bad bank" in April 2009 to buy 81 billion euros (\$113 billion) of property loans from five Irish lenders, and so far the banks have sold loans at an average discount of 52 percent. NAMA, which can take a developer's entire portfolio of loans from the banks, rather than just the non-performing ones, welcomed the court's decision today, saying it highlighted the "critical importance" of its work in "extraordinary circumstances."

"Loans are not 'going into NAMA' as a punishment for borrowers whose problems may have contributed to the financial crisis," according to today's written judgment. NAMA is a part of policy measures aimed to "solve the problems" of the banks, it said.

‘Adverse Effects’

The case before the High Court focused on the transfer of over 80 million euros of loans McKillen has with Bank of Ireland Plc. He reserved his right to use the case to prevent seizures of loans linked to lenders including Anglo Irish Bank Corp., totaling 2.1 billion euros.

A move by the Dublin-based agency to buy McKillen’s loans would cause “significant adverse effects” to his business, Michael Cush, McKillen’s lawyer said in a Dublin court last month. A transfer of his loans to NAMA may result in “considerable” reputational damage for the developer, who is servicing his loans, Cush said.

McKillen’s properties are generating about 150 million euros annually, equal to 1.7 times interest payment costs, McKillen’s lawyer said last month. Ninety-six percent of the properties are leased.

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