



May 2017

Priority of Judgment Mortgages

The status of a judgment mortgage as against an executed charge that was registered later in time in the Property Registration Authority has been clarified by Keane J. in [Larianov Foundation v Leo Prendergast and Sons \(Engineering\) Ltd](#) (Unreported, High Court, 24 March 2017) [2017] IEHC 192.

This judgment answers the question raised by many secured lenders in relation to the priority of their security and provides helpful confirmation for secured creditors as to the priority of a charge over a judgment mortgage.

The case examined whether a charge executed though not registered is valid and whether it holds priority over a judgment mortgage that was registered against those folios prior to the first charge being registered.

The question posed by the court was:

“Larianov’s judgment mortgage was registered as a burden on the lands by the Property Registration Authority on 9 January 2012. Cascade’s mortgage deed was registered in the Land Registry as a burden on the lands on 30 August 2012. Which of those charges takes priority?”

The decision of the court turned on [section 117\(3\) of the Land and Conveyancing Law Reform Act 2009](#) (as amended), which provides that a judgment mortgage is subject to any right or encumbrance affecting the relevant land, whether registered or not, at the time of its registration. On this basis, the executed charge had priority over the judgment mortgage.

For further information on any of the issues discussed in this article please contact:



[Kate Curneen](#)

Partner Banking

DD: + 353 (0)1 673 1738

kate.curneen@dilloneustace.ie



[John O’Riordan](#)

Partner Litigation

DD: + 353 (0)1 673 1792

john.oriordan@dilloneustace.ie



[Peter Bredin](#)

Partner Litigation

DD: + 353 (0)1 674 1013

peter.bredin@dilloneustace.ie

Laura Butler

Litigation PSL

DD: + 353 (0)1 673 1850

laura.butler@dilloneustace.ie

The court acknowledged that an argument could be made for a contradiction between certain of the general priority provisions set out in the [Registration of Title Act 1964](#) (which it was argued should give the judgment mortgage priority) and section 117(3). However, it did not accept that these arguments, even if successful, could ever give a judgment mortgage priority over an executed charge.

In answering this query Keane J. examined sections [116](#) and [117](#) of the Land and Conveyancing Law Reform Act 2009 (as amended) and [section 71](#) of the Registration of Title Act 1964 which deal with registration of judgment mortgages and the effect of registration. The tensions between these provisions was resolved by the use of a means of interpretation “*that the general does not derogate from the specific, or that provisions of more universal application do not prevail over, or detract from, those of specific application to the same subject matter*” or “*generalia specialibus non derogant*”. The court held that the 1964 Act settles the priority of registered burdens according to the order in which they are entered in the register, and not the date of their creation, subject to any entry to the contrary on the register. However, it excludes from its effect burdens whose priority is created by statute and judgment mortgages which are created by registration, and whose priority is fixed by virtue of s. 71(2) of the 1964 Act.

Conclusion

This decision is to be welcomed as a clarification of the complexities that can arise in the context of priorities of securities. It emphasises the importance of ensuring that all necessary measures are taken into consideration before entering into litigation in this type of case. The lending process must be completed in a manner that ensures that an executed charge is available on draw-down of the relevant facility and that all security registrations are completed in time to ensure that the priority of the charge is clear and to minimise the risk of disputes subsequently arising with other creditors.

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2017 Dillon Eustace. All rights reserved.