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# S73 of the Registration of Deeds and Title Act 2006

by **lk-shields**

# S73 of the Registration of Deeds and Title Act 2006

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The Supreme Court recently clarified the legal status of equitable mortgages created over registered land by the deposit of a land certificate.

## ***Promontoria (Oyster) Designated Activity Company v Hannon [2019] IESC 49***

Did section 73 of the Registration of Deeds and Title Act 2006 (the Act) abolish any entitlement which a party might have formerly held, in respect of registered land, as the holder of a lien created solely by the deposit of a land certificate?

That was the fundamental question before the Supreme Court in these proceedings.

In overturning the decisions of both the High Court and the Court of Appeal, the Supreme Court determined that it did.

## **Background**

In Ireland the concept of the creation of an equitable mortgage over lands by the deposit of the landowner's title deeds is a well-established one. As far back as 1891 it was recognised by the legislature through the Local Registration of Title (Ireland) Act, that a lien could be created over registered land by the deposit of a land certificate. And section 105(5) of the Registration of Title Act 1964 also provided, inter alia, that a lien could be created on registered land by the deposit of a land certificate.

The plaintiff in this case was originally Ulster Bank Ireland Limited, who during the course of the proceedings, sold a loan asset and related security of a borrower, Mr Gerard Hannon, to Promontoria (Oyster) Designated Activity Company. In June 2006 Hannon deposited the land certificates for five folios of land with Ulster Bank. In March 2010 Ulster Bank wrote to Hannon to inform him of their intention to register a lien on the folios and subsequently applied to the Property Registration Authority (the PRA) which duly processed the registration application. Ulster Bank then issued proceedings in the High Court to enforce its lien over the lands in question. In his defence, Hannon argued that the Act had abolished the system of equitable mortgage by way of deposit of land certificates.

## **The Law**

The relevant provisions of section 73 of the Act provides:

*73.— (1) The Authority shall cease to issue land certificates and certificates of charge under the Act of 1964, and accordingly—*

*(b) section 105 (certificates) thereof*

- *applies only in relation to land certificates and certificates of charge issued before the commencement of (Section 73(1)) and not already cancelled, and*

- *ceases to have effect 3 years after the commencement of subsection (2).*

Section 73 (2) of the Act provides, inter alia, that any land certificates cease to have any force or effect on the expiration of the period of three years. It came into force on 1 January 2007.

Section 73(3) of the Act permits, inter alia, the holder of a relevant lien to apply to the PRA for the registration by 31 December 2009, i.e. the last day of the three year period provided for by Section 73(2) of the Act.

### **The Decision**

Hannon argued that Ulster Bank's claim that it had a lien over his lands was groundless in circumstances where he contended the land certificates which Ulster Bank held ceased to have any force on foot of section 73 of the Act and where Ulster Bank had failed to apply to the PRA to register its purported lien within the timeframe prescribed by the Act.

In the Supreme Court, Promontoria contended that a lien by deposit in respect of registered land is not solely a creature of statute and suggested that a decision to make ineffective all existing liens by deposit in respect of registered land would have amounted to retrospective legislation, which would have required clear statutory language.

Delivering his judgment, Chief Justice Clarke stated that it seemed to him that the overall approach of the legislation is to move further towards all land being registered and all interests being likewise registered. He went on to say that the proper construction of the Act is such that it must be taken to have been the statutory intention to bring by the expiry of the relevant three year period, a complete end to the system of lien by deposit of a land certificate in respect of registered land.

### **Comment**

It now appears likely that a party seeking to enforce a lien over registered land created by the deposit of a land certificate must be able to demonstrate that it:

1. applied to the PRA for the registration of the lien before 31 December 2009; and
2. that the said application was successful.

The judgment serves as an endorsement for the system of land registration in Ireland which is, as described by the PRA, "more modern, flexible and comprehensive".

## About the Author