

Borrower uses promissory note to pay mortgage debt

By Darren Skelton

DURING home repossession hearings in a Civil Motions Court, a Waterford man appearing on behalf of his unwell sister left a Bank of Ireland representative lost for words as he explained that the debt they owed had been paid via a promissory note.

During the day, a number of financial institutions, including Bank of Ireland, Ulster Bank and Permanent TSB were seeking rulings and repossessions against borrowers who had fallen into difficulties with their repayments.

In a Motions Court the County Registrar has the power to order a repossession but can also order adjournment, notice to third parties or more time to file affidavits.

Case after case, borrowers told the court of how their circumstances had changed and they were no longer able to keep up with the substantial repayments. Each time, they were told that this was not a defence against them losing their home. Until that

is, the case of the promissory note arose.

Promissory notes were catapulted into the spotlight when, in 2010, the then Finance Minister, the late Brian Lenihan wrote a promissory note to Anglo Irish Bank and Irish Nationwide (now IBRC) – basically giving them €31 billion, which the banks then used as collateral to borrow from the Central Bank of Ireland's emergency liquidity fund.

Addressing the hearing, David Walsh, representing his sister quoted the 1882 Bills of Exchange Act, which considered a Promissory Note to be the same thing as cash. David quoted a judgement by the late Lord Denning, which stated that "a Bill of Exchange or a Promissory Note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary."

He added, "The debt has been paid in full. The debt of exchange has been signed, sealed and delivered, in private, to the bank. It is not fair that the banks are using the legal system, which is sup-

posed to be used to protect the innocent and punish the guilty, to take action against ordinary decent people."

Responding to Mr Walsh, county registrar, Niall Rooney, confirmed that this was a valid defence against the actions being sought by the Bank of Ireland. "As county registrar, once you put forward a defence, I lose my jurisdiction and would have to put it forward to a Circuit Court judge. On the basis of what you're saying, you may well indeed be 100% right but that is up to the Circuit Court judge to decide." Mr. Rooney then adjourned the case until the next Civil Court sittings in March, during which time Mr. Walsh said that "the banks may want to drop the case."

Speaking to the Waterford News & Star after the hearing, David Walsh said that he would happily accept the verdict of the court, as long as it applied across the board. "The Irish Government and the banks that created the recession cannot pick and choose when it is okay to issue a promissory note," Mr Walsh said.