

# Judicial Communications Office

Friday 28 October 2011

## HIGH COURT DISMISSES APPLICATION BY THE LAW SOCIETY OF NORTHERN IRELAND

### Summary of Judgment

[1] Mr Justice McCloskey, sitting today in the High Court of Justice in Northern Ireland, dismissed an application by the Law Society of Northern Ireland to permit it to sell the family home of B.

[2] The protagonists in this litigation are :

- (a) The Law Society of Northern Ireland ("*the Society*").
- (b) A, formerly a partner in the firm of C, Solicitors.
- (c) B, wife of A.
- (d) D, former partner of A in the firm of C, Solicitors.

[3] The subject matter of these proceedings is the family home.

[4] By order dated 15<sup>th</sup> November 2008, the Society intervened in the solicitors' partnership known as C. This order appointed the Society attorney of A and D (partners in C) under the Solicitors (NI) Order 1976. Following this Order, A executed a charge over the family home in favour of the Society and this was duly registered.

[5] Other related proceedings include the following :

- (a) Bankruptcy proceedings brought against A by HMRC were not pursued, subject to the reservation of a right to reinstate such proceedings.
- (b) The Law Society pursued disciplinary proceedings against A, which are now concluded. These did not result in him being struck off from practice.
- (c) A's partner, D, has now been declared bankrupt.

[6] In these proceedings, the Society applies to the court for an order authorising the sale of the family home. The Society maintains that an order for sale of this asset is necessary to meet as many of A's financial liabilities as possible. On the basis of the Society's calculations, these could be as much as £1.2 million. At this juncture, A's concrete financial liabilities are closer to £300,000. They have not yet been audited or finalised. The value of the family home has been progressively diminishing, in a depressed property market. The evidence suggests that it has shrunk by approximately one half, to around £700,000. The mortgages relating to the family home, which have

# Judicial Communications Office

priority, would consume approximately two thirds of this sum. Thus, on a rudimentary calculation, the equity in the family home is now approximately £200,000.

[7] The cornerstone of the Society's case is that A and B are joint legal and beneficial owners of the family home. Based on the above calculations, this means that if the court were to order sale and if the asset were to be sold in the current financial climate, the Society could not realistically expect to recover much in excess of £100,000 viz. A's asserted half share.

[8] The Society's application for a sale order was resisted by B. Ultimately, the linchpin of her defence rested on an assertion that in 2002 B relinquished fully his interest in the family home in B's favour. B insisted at that time that he do so, in consideration of a further remortgage of the family home as security for yet another financial advance to A to support his ailing professional and business activities. In short, B made the case that from 2002 she became, by agreement, the sole legal and beneficial owner of the family home. This was strongly contested by the Society.

[9] Having considered all of the evidence, the court has found in B's favour. Mr. Justice McCloskey stated:

*"[23] ... the principal task for the court ... entails an assessment of credibility, veracity and reliability. Having conducted this exercise, I resolve this issue in favour of B. I do so unhesitatingly, for two basic reasons. The first is that I found her to be a manifestly truthful witness. The second is that, in my view, the various contra indicating factors on which the Society relies fall well short of justifying a rejection of B's evidence. In short, they are, in my view, eclipsed by her powerful and compellingly truthful sworn evidence. Having subjected her evidence to critical scrutiny, I fully accept her explanations for failing to explicitly assert her claims at an earlier stage."*

[10] Dealing with a discrete issue relating to the composition and content of two letters bearing B's signature, sent to the Society in June/July 2009, McCloskey J stated:

*"I find that she is mistaken in her recollection of this discrete matter. True it is that both letters bear her signature. However, I find, as a matter of probability, that the composition of the letters was influenced – wholly or partly – by A. In content, syntax and structural layout they bear the very clear stamp of an experienced legal practitioner. The alternative analysis of this aspect of the evidence is that B, rather than being mistaken in her recollection, was, subconsciously or otherwise, reluctant and resistant to exposing her husband's hand in these letters, motivated by an instinctive fear that this could in some way be detrimental to him and/or the family as a whole. As an outstandingly loyal, devoted and model wife and mother, this would not, objectively, be surprising. This alternative analysis seems to me marginally less likely, though perfectly plausible. Whichever analysis is correct, I conclude that*

# Judicial Communications Office

*neither undermines B's claim that in or around September 2002 her husband relinquished fully his one half share in the matrimonial home to her...*

*It is common case that prior to September 2002 B was the legal and beneficial owner of a one half share in the matrimonial home. The effect of these findings is that from September 2002 she acquired, in equity, a beneficial interest in the remaining one half share, extinguishing absolutely her husband's previously existing one half legal and beneficial interest. I conclude that B has discharged her burden and I find this to be one of those exceptional cases contemplated in **Stack -v- Dowden**."*

[11] The court, therefore dismissed the Society's application for an order permitting it to sell the family home.

**ENDS**

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