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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*ICOS No:* 25/065419
	Delivered: 20/10/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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Between:

NOELLE McASHEA

Plaintiff (Applicant)

-and-

MURNAGHAN AND FEE SOLICITORS, DONAL FEE, BERNADETTE DUFFY, ATTRACTA LUNNY and NESSA MURNAGHAN

First to Fifth Defendants

-and-

CONNON McBARRON

Sixth Defendant (Respondent)

_____

The plaintiff appeared in person
Graeme Watt (instructed by Gibson Solicitors LLP) for the sixth defendant

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SCOFFIELD J

Introduction

[1] This is an application for an interlocutory injunction. I am giving a short written ruling on the application for two reasons. After the hearing of the application, I reserved judgment pending the provision of additional information from the respondent (in relation to the terms of undertakings which he was prepared to offer) and a short response from the plaintiff. In light of that facility, I indicated that I would give a ruling on the application today, after the additional information and any additional representations received. The plaintiff indicated that she was unable to attend court on this occasion and, in those circumstances, would prefer to be provided with a written communication of the court's decision. First, therefore, this written ruling is designed to facilitate that. Second, I have set out the court's

reasoning in deference to the strength of feeling which was evident in the submissions made by the plaintiff and in light of the fact that the outcome of the application is likely to come as a disappointment to her.

[2] The plaintiff presented the application in person. The respondent to the application, the sixth defendant, was represented by Mr Watt of counsel. I am grateful to each of them for their written submissions and economically presented oral submissions.

Background

[3] By this application the plaintiff (Noelle McAshea, whose maiden name is McBarron) seeks an interlocutory injunction restraining the sixth defendant, her brother Connor McBarron, from "selling, letting, mortgaging, or otherwise disposing of or interfering with the property known as 142 Inishmore Road, Corracoash, Macken, Enniskillen, County Fermanagh, BT92 3EJ" until the trial of this action or further order of the court. The application is grounded on the plaintiff's affidavit of 11 August 2025. A writ was also issued on that date, along with the notice of motion seeking interlocutory relief.

[4] The plaintiff is the executrix of the will of her late mother, Philomena McBarron ("the deceased"), who passed away on 4 November 2022. The plaintiff was also previously appointed as her mother's attorney under an enduring power of attorney created in August 2018.

[5] The action concerns a property which was previously owned and occupied by the deceased. It was built by her on land gifted to her by the plaintiff's grandfather at the time when her husband (the father of both the plaintiff and sixth defendant) died prematurely in middle-age in 1978. The plaintiff's case is that, from that time on, it was a well-known intention on the part of her mother that the plaintiff, her only daughter, would inherit the house. The plaintiff's brothers were to share in family farmlands.

[6] However, the property was transferred – without her knowledge, the plaintiff says – in or around July 2019. (The respondent says the transfer was perfected in August 2019, when the deed of transfer dated 10 August 2018 was registered.) In any event, the transfer was an inter vivos transfer from the deceased to the respondent, which was subject to a right of residence in favour of his mother. The respondent is now the registered owner of the property.

[7] The key dispute in the case centres upon the validity of that transfer. The plaintiff's case is that the property had been promised to her on her mother's death; and that this arrangement was well known within the family, from the time of her father's death in 1978. She relies upon the terms of a will made by her mother on 14 June 2004 which leaves the entirety of the deceased's estate to the plaintiff (which would have included the property in question). A further will dated 10 August 2018

also leaves the deceased's entire estate to her daughter after payment of her "just debts, funeral and testamentary expenses." The enduring power of attorney was also signed by the deceased on that date; as, it appears, was the transfer form.

[8] I understand the plaintiff's case to be that the transfer of the property to the respondent was fraudulent, in that a signature on the transfer was forged; that it was undertaken at a time when her mother lacked capacity to execute the transfer (as she was on a dementia pathway, cognitively impaired and under medical care); and/or that she was subject to undue influence. (There also appears to be elements of proprietary estoppel in some of the plaintiff's arguments, although that is not expressly raised; indeed, the case is not yet pleaded out).

[9] For his part, the respondent says he believes both that his mother had capacity at the time of the transfer and that she had "sound motives" for wishing the property to come to him to the exclusion of his siblings. No further detail in relation to the substance of his case is provided in his affidavit evidence filed for the purpose of the present interlocutory application.

[10] The plaintiff's writ also includes claims against the first to fifth defendants, all connected to the firm of solicitors which handled the challenged transfer and the further will of the deceased apparently made on 10 August 2018. They have played no part in the present application since no relief is sought against them at this stage.

[11] The respondent does not live in the property. It is currently rented out. Details of this have been provided in the respondent's affidavit. The property is currently let out to a couple who live there with their two children. He avers that they moved in after their own home was water-damaged. They have been in the property since May of this year and are due to quit "in the New Year" (although when precisely is unspecified). Other tenants were in the home from May 2024 to September 2024. The respondent further avers that he has "no current plans to let the property" when the present tenants leave, although he freely admits that those plans "may change." He has said he finds the rental income useful as he is undergoing treatment following surgery and has been unable to work as a result. (The plaintiff disputes this, says that the respondent continues to farm and relies generally on the financial health of the respondent's situation.) The respondent also contends that occupation of the house has advantages in terms of security and maintenance.

[12] As to personal items, the respondent says, first, that the applicant is welcome to remove personal items from the home; and, second, that he will do his best to meet her concerns in respect of other items she wishes to preserve. The plaintiff views these offers with suspicion. She considers that the respondent has not previously looked after items of value at the home; that many personal effects have been stored inappropriately; and that the occasions when (the respondent says) he offered to allow the plaintiff to come and retrieve certain items were arranged at times and in such a manner as to make this offer impractical or ineffective.

The relevant principles

[13] The relevant legal principles to be applied for the purposes of an application such as this are set out in *American Cyanamid Co* v *Ethicon Ltd* [1975] AC 396. The first question for the court is whether the case raises a serious issue to be tried. As Lord Diplock made clear, however, at 407H:

> "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

[14] Assuming there is a serious issue to be tried, the court will then go on to examine whether damages are an adequate remedy for the party seeking the interlocutory relief (and for the party sought to be restrained) and, if that is not determinative, will address the balance of convenience.

[15] Albeit in a different context (that of public procurement litigation, where specific provisions and special considerations might arise) Deeny J provided a summary of the court's approach under the *American Cyanamid* principles in *McLaughlin & Harvey Ltd* v *Department of Finance and Personnel* [2008] NIQB 25, later endorsed and applied in a number of cases in the Chancery Division (for instance, *Dunnes Stores (Bangor) Ltd* v *New River Trustee 11 Ltd* [2015] NICh 7; and *Drennan* v *Walsh* [2018] NICh 3). At para [6] of the *McLaughlin & Harvey* case, Deeny J gave the following guidance:

> "It can be seen that the test laid down by the House of Lords, is sequential.
>
> (1) Has the plaintiff shown that there is at least a serious issue to be tried?
>
> (2) If it has, has it shown that damages would not be an adequate remedy for the plaintiff and would be an adequate remedy for the defendant if an injunction were granted and it ultimately succeeded?
>
> (3) If there is doubt about the issue of damages the court will then address the balance of convenience between the parties.

(4) Where other factors are evenly balanced it is prudent to preserve the status quo.

(5) If the relative strength of one party's case is significantly greater than the other that may legitimately be taken into account.

(6) There may be special factors in individual cases.

I would add seventhly the court has an overall discretion to do what is just and convenient in the circumstances. For my part I find the summary by Laddie J in *Series 5 Software v Clarke* [1996] 1 All ER 853, which is quoted with approval in *Bean on Injunctions* 9th Edition, p. 39, is both helpful and consistent with the decision of the House of Lords.

I would remind parties of the statutory basis for the exercise of the court's power in this regard. Section 91 of the Judicature (NI) Act 1978 empowers the court to grant a mandatory or other injunction "in any case where it appears to the court to be just and convenient to do so for the purpose of any proceedings before it …" That again makes clear that the court has an overall discretion to exercise this power when it is 'just and convenient to do so.'"

[16] In *Drennan v Walsh* (supra) McBride J cited Deeny J's guidance with approval and built on it (at para [19] of her judgment) in the following terms:

"Therefore, when determining whether to grant an interlocutory injunction the court should ask the following questions sequentially:

(i) Is there a serious issue to be tried?

(ii) If yes, are damages an adequate remedy for the plaintiff and is the defendant in a financial position to pay them?

If yes, no interlocutory injunction should normally be granted.

(iii) If damages would not provide an adequate remedy for the plaintiff the court should then ask; would

the defendant be adequately compensated under the plaintiff's undertaking as to damages?

If yes, there would be no reason under this ground to refuse an interlocutory injunction.

(iv) Where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both then the court should ask; where does the balance of convenience lie?

This basically means that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. Whilst it is as Lord Diplock notes unwise to attempt even to list the various matters which may need to be taken into consideration in this exercise in *National Commercial Bank Jamaica Ltd v Olint Corporation Ltd* [2009] 1 WLR 1405 Lord Hoffman set out some matters which he considered the court may take into consideration. He stated at paragraph [18] as follows:

> 'Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases.'

If the balance of convenience lies in favour of the grant of an injunction then normally the court should grant the injunction. Similarly if the balance lies against the grant the court should normally refuse to grant the injunction, but this is subject to the exercise of its overall discretion to do what is just and convenient.

(v) In the event the balance of convenience is evenly balanced the court should take such measures as are necessary to preserve the status quo. The preservation of the status quo involves a consideration of whether the injunction would postpone the date upon which the defendant is able to embark upon a course of action which he had not previously undertaken or whether it would interrupt him in the conduct of an established enterprise and therefore cause much greater inconvenience to him since he would have to start again to establish his enterprise in the event that he succeeded at trial. In respect of this heading the court may take into account any delay by the plaintiff which has resulted in the defendant's activities now being at an advanced stage.

(vi) The court needs to consider whether there are any special features in the case."

[17] McBride J went on to explain, at para [20], that, in the exercise of its overall discretion (and in determining whether it is just and convenient to grant an injunction) the court should take into account all of the matters identified in the passage quoted above, any special features which exist in the case and all matters which are relevant to the grant of equitable relief, including any delay by the plaintiff and whether he or she comes to the court with 'clean hands.'

Summary of the parties' positions

[18] The plaintiff's case is that, unless the court intervenes, the respondent may take steps to rent, sell or dispose of the property; and/or may permanently remove or destroy personal possessions or estate assets currently under his control. She feels it is wrong that he is in possession of the property to which (on her case) he has no right and is profiting from that property when it ought to be an asset within her mother's estate (and, therefore, have passed to her under the terms of her mother's will). The plaintiff submits that her brother's use of the property, in particular renting it out, may or does irreparably harm the property and/or her mother's estate. She lays significant emphasis on the uniqueness of the property and its sentimental value as her former family home.

[19] The respondent said on oath in his affidavit opposing this application that he has "no intention of selling or mortgaging the property until the resolution of this action" and that he is content to give an undertaking to the court in those terms. He accepts that there is a serious case to be tried. However, he contends that, in light of the fact that he is prepared to undertake not to sell or dispose of the property, any

remaining concern on the part of the plaintiff can be compensated by way of damages. Assuming the house is not sold, this is simply a "money case", in his submission.

The respondent's undertakings to the court

[20] As noted above, the respondent indicated upon affidavit that he would be prepared to provide a number of undertakings to the court in order to protect the plaintiff's position from any irreparable harm by way of disposing of or unduly encumbering the property. At the hearing, I asked for further details in this regard. Shortly after the hearing, the respondent provided the following formal, signed, written undertakings to the court:

> "I, Connor McBarron, hereby undertake to the court that I will not without further order of the court:
>
> 1. Sell, mortgage or charge any part of the property contained in folio 17220 County Fermanagh ('the property').
>
> 2. Let the property for any term exceeding 6 months, but reserving the right to let from month to month or shorter period on the expiry of the initial term.
>
> 3. Let the property without giving written notice to the applicant of the fact of the letting and the amount of rent reserved."

[21] The plaintiff contends that the undertakings proposed "fail to provide effective or enforceable protection for the property in question", particularly because of "the absence of independent oversight, the respondent's established pattern of self-serving behaviour, or the ease with which compliance could be evaded."

[22] However, there is little if any difference between the oversight and enforceability available in respect of an injunction on the one hand and formal undertakings to the court on the other. Valentine comments that such an undertaking "is enforceable like an injunction" (see Valentine, *Civil Proceedings: The Supreme Court* (1997, SLS) (hereinafter 'Valentine') at para 11.72); as too does Bean (an undertaking is "enforceable in the same way as an injunction": *Bean on Injunctions* (15th edn, 2025, Sweet & Maxwell) (hereinafter 'Bean') at para 5-38).

[23] Breach of an undertaking given to the court by a party is a civil contempt, enforceable by way of imprisonment or fine on an application for committal (see Valentine paras 16.55 and 16.63-16.64). The plaintiff would not be materially better off if the same restrictions were embodied within an order of the court. In either event, the plaintiff has to be astute to bring the matter back to the court in the event

of breach. The plaintiff may also of course seek to secure additional protection (which may cater for at least some of her concerns) by registering a pending action as a burden on the property.

Resolution of what remains of the application

[24] As mentioned above, the respondent accepts that there is a serious issue to be tried in this case. Several of the plaintiff's submissions appeared to invite the court to accept that her case was unanswerable, already made out or, at least, had an extremely high prospect of success. It is not possible to make any such assessment at this early stage. No statement of claim has yet been lodged. Much evidence will have to be assembled and considered before the court is in a position to conclude that the challenged transfer was in some way fraudulent or ineffective. That is not to say that the plaintiff may not have a good case on some elements of her claim; it is simply to say that the court cannot proceed for now on the basis that she will be successful in her claim. Nor do I need to. The first hurdle for the applicant is overcome by virtue of the respondent's concession.

[25] The meat of the argument on the application related to whether damages would be an adequate remedy for the plaintiff. I accept Mr Watt's submission that, in light of the undertakings provided by the respondent, they would be. The undertakings preserve the property so that it will be free to be recovered by the plaintiff (either immediately or within a short period) in the event that she is successful in her claim to it. The respondent has rightly recognised that it would not be appropriate for him to dispose of the property, or seriously encumber it, until its true ownership has been resolved. In my view, the undertakings are adequate for this purpose. That being the case, the real objection which remains – and the target of what is left of the present application – relates to the respondent's ability to let the property and earn rental income from it.

[26] Although the plaintiff wishes to restrain the respondent from "interfering with" the property, this really amounted to concern about him having use of the property and, in particular, renting it out. The plaintiff objects to the respondent profiting from his wrong in the meantime. However, he is presently the legal owner of the property. In the event that the outcome of the proceedings is that he was never entitled to it, the plaintiff may claim against him for the loss she has sustained by reason of being deprived of possession of the property in the meantime. There may be a number of ways in which such a claim could be formulated (for example, mesne profits or damages for trespass); but Mr Watt accepted that it would be highly likely that the respondent would have to account to the plaintiff for the rental income he had secured from the property in the interim, in the event that the plaintiff ultimately succeeds in her claim. This is an aspect of the claim where damages would be an adequate remedy. The third of the undertakings set out above (see para [20]) should assist in quantifying any such claim; and further details will be available by way of discovery.

[27] I entirely understand the plaintiff's emotional connection to the house and her preference that others – strangers to the family – not be permitted to live there. She may well also have a valid fear and concern that tenants will not take the same care of the home as a family member might (although I should add that there is presently no evidence to suggest that the current or former tenants are doing anything which might damage the property or its contents). However, neither of these concerns is adequate to warrant the type of injunctive relief which the applicant seeks. In truth, any failure to repair or maintain the house is, in legal terms, a matter which may be adequately compensated in damages. The test is whether damages would be an *adequate* remedy, not whether they would be a perfect remedy (see Bean, at para 3-25). I do not consider that, properly viewed, the type of loss or damage which the plaintiff fears is irremediable, as she suggests.

[28] Certain aspects of the plaintiff's submissions suggested that she might hope to be granted possession of the house pending trial, although that is not sought in her notice of motion. However, loss of use of the house in the meantime can also be compensated in damages in due course if necessary. It would be an unusual order to preclude the prima facie legal owner of a property from making any use of it, in favour of another, pending the determination of a claim such as this.

[29] In view of my conclusion that, with the benefit of the respondent's undertakings, any remaining issue of concern for the plaintiff can be compensated in damages, the presumption is that no interlocutory injunction should be granted. (I should add that there is no suggestion that the respondent would not be in a position to meet a claim for damages. He has a farming business, a pension as a retired teacher, and his own property.)

[30] I also take into account that there is an open offer, set out on affidavit, that the plaintiff can remove any particularly cherished personal effects from the house. I would expect that offer to be honoured, if the plaintiff now wishes to take it up; and that appropriate arrangements would be made to facilitate this.

[31] My conclusion on the adequacy of damages is enough to resolve the present application. However, I am fortified in my decision that an interlocutory injunction of the type sought by the plaintiff is not appropriate by consideration of a number of further factors:

(a) As to the balance of convenience, the plaintiff relied, inter alia, on there being a "loss of evidence" if her application was not granted. However, there has been no explanation how any evidence of any significance to the issues in dispute in the proceedings (which relate principally to the transfer in 2018/2019) would be lost.

(b) The plaintiff relied strongly upon maintaining or preserving "the status quo" pending the conclusion of these proceedings. However, the relevant status quo is the state of affairs existing during the period immediately preceding

the issue of the proceedings (see Bean, at para 3-30). In this case, that was August 2025, at which time the respondent was in possession of the property as legal owner and had rented it out to tenants who were (and are) in occupation. Properly understood, the presumption in favour of preserving the status quo (all else being equal) favours refusal of the application.

(c) The plaintiff has indicated a willingness to provide the usual undertaking in damages. The respondent points out that she has not provided evidence of her means to satisfy a claim on that undertaking if he is restrained from renting the house pending trial but ultimately succeeds at trial. That could be a significant sum if (as the evidence suggests) the house can be rented out for something like £750 per month. The plaintiff has herself indicated on a number of occasions that she is of "limited financial means." In the event that she is unsuccessful at trial, there is an issue about whether, or how easily, she may be able to meet any cross-claim on the undertaking.

(d) I also take into account the plaintiff's delay in making her application for an interlocutory injunction. Her mother passed away in late 2022. The respondent rented the property out for the first time (as far as the present evidence suggests) in May 2024. The proceedings were not brought until August 2025, over 2½ years after the death of the parties' mother but also some 15 months after it first would have become clear that the respondent was letting the property.

Conclusion

[32] The plaintiff now has the benefit of the undertakings provided to the court by the sixth defendant (see para [20] above). I consider that this adequately protects her position in terms of the preservation of the index property pending conclusion of the proceedings. For the reasons given above, I do not consider it appropriate to grant any further injunctive relief against the sixth defendant at this time. The application for an injunction is therefore dismissed. I recognise that this will come as a disappointment to the plaintiff, but her remedy is to seek to progress the case to trial as expeditiously as possible.

[33] In light of the fact that the sixth defendant has recently provided the undertakings set out above, my provisional view is that the costs of this application should simply be reserved to the trial judge.