

Neutral Citation: [2018] NIMaster 2

Ref: **2018NIMASTER2**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **14/02/18**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

Nicola Beavers

Petitioner;

and

David Beavers

(Marketing of Property)

Respondent.

Master Bell

INTRODUCTION

[1] In this judgment I shall, for ease of reference, refer to the petitioner and the respondent as “the wife” and “the husband”. In her application the wife seeks Ancillary Relief pursuant to a summons issued on 22 September 2016.

[2] The parties are requested to consider the terms of this judgment and to inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be published in its present form.

[3] At the hearing one discrete matter was dealt with. The parties had agreed that their farm required to be sold. They wished of course to obtain the highest possible price for it. However their experts, Mr Brian Wilson and Mr

Connor Mallon, differed in respect of the marketing approach which ought to be adopted and the court was asked to hear expert evidence on this question and make a ruling.

MR WILSON'S EVIDENCE

[4] Mr Wilson was called to give evidence on behalf of the wife. Mr Wilson is an auctioneer, estate agent and valuer. He has no formal qualifications and was not a member of any professional body. However he owns a business in Dungannon which has been in existence since 1982. He has therefore been in business for some 35 years. Prior to this he was in livestock sales and was selling farms, livestock and machinery. The area he most often practices in is Dungannon and in Tyrone generally. He normally deals with a mixture of property types. 60% of these would be farming properties and 40% would be residential. He acknowledged that Best Property Services, for whom Mr Mallon works, is a larger operation than his own and that they would have more properties on their books than he does.

[5] Mr Wilson believes that the property should be sold as one lot. Previously he had considered that the property might be sold in two lots in the event that it was not all sold together. Those two lots would have been all the property on one side of the road and all the property on the other side of the road. He submitted that his approach was based on the assumption that there was a potential buyer for the whole property. He considered that 52 acres (the size of the whole property) was a nice, reasonable amount of land for a purchaser to buy. He stated that sale of 52 acres as one lot did not exclude a group of potential purchasers, for whom 52 acres would be too much. He acknowledged that sometimes farmers buy a property together and then split it up between themselves. In cross examination however he conceded that selling the property as a whole might exclude those who were not in the poultry business.

[6] Mr Wilson referred in his report to the RSPCA Welfare Standards for Laying Hens. The report states at paragraph 7 :

“If the Court is giving consideration to the separate sale of the two poultry units which I valued at £200,000 the court must in my respectful opinion give consideration to the fact that as this holding would be sold as a working free range commercial egg poultry business with the capacity for 16,000 birds the sale of the poultry units requires adjoining farmland to form part of the sale to make this a viable business. I enclose a copy of the RSPCA Welfare Standards for Laying Hens, Page 22 which deals with stocking density. The Court will note that for birds aged 21 weeks and older, stocking density must not exceed (a) 2,000 hens per hectare over the life of the flock (b) 2,500 hens per hectare at any one time.

The maximum stocking density over the life of the flock should relate to the total amount of range available to the birds. Access to some of this area can be temporarily restricted in order to rest the land and to help maintain the quality of the range, as long as Rule 4.1(b) is never exceeded.

To enable the future owner of the poultry unit to comply with the Welfare Standard Regulations for Laying Hens it is essential that the entirety of the land comprised within Fields numbered 1, 3, 4, 5, 6, 7 and 15 are sold with the poultry units otherwise both units are commercially unviable as they cannot comply with Welfare standard Regulations.”

[7] Mr Wilson stated that the option suggested by Mr Mallon of selling the matrimonial home plus half a field as one lot was not a viable option. He considered that the poultry units needed 12.5 acres. Selling half a field with the matrimonial home reduced the number of chickens that the landowner could raise.

[8] Mr Wilson also raised a number of other reasons for not separating the matrimonial home and the poultry units into separate lots. Firstly, there were issues of smell. Selling the matrimonial home on its own would, he suggested, mean that any new owner of the matrimonial home would have to cope with the smells emanating from the poultry units. Secondly, issues of theft. If the matrimonial home was sold as a separate lot, then the owner of the poultry units could not live beside the units. Theft from agricultural properties was a significant problem. Thirdly, issues of noise. The noise of lorries delivering feed and collecting eggs, together with the noise of any other farm traffic, would have an impact on the separate sale value of the matrimonial home. Fourthly, health and safety issues. Mr Wilson considered that having people living beside an agricultural business who had no connection to that business created health and safety risks.

[9] However the principal reason that Mr Wilson seemed to be advancing for not marketing the property in separate lots was the danger of the good land selling and the husband and wife being left with what he described as the “bad” land. In particular he was concerned that they would be left with a portion of land referred to as the quarry land.

MR MALLON’S EVIDENCE

[10] Mr Mallon has been employed by Best Property Services (NI) Ltd for over 30 years. He is a general practice Chartered Surveyor and has been a member of the Royal Institute of Chartered Surveyors since 1989 and has been a member of the Chartered Institute of Arbitrators since 1993. He has extensive experience of both valuations and sales of agricultural property. Of the 60 or so properties currently being offered for sale through Best Property Services (NI) Ltd, approximately 20% would be agricultural sales. Mr Mallon accepted that Mr Wilson was “exceptionally experienced” and that his lack of formal qualifications did not amount to a reason for in any way disregarding his evidence.

[11] Mr Mallon recommended that the property should either be sold as one lot or as five lots. He suggested that the appropriate marketing approach if the property was sold as five lots was that any bidder could bid for one or more of the lots, or seek to purchase the entire property. He stated that his approach was an attempt not to exclude any potential bidders. His firm had found that this was quite successful as an approach. In cross examination he conceded that he had not dealt with a property which was for sale by lots since 2016. But he would not accept that an “unlotted” approach was more usual in sales of agricultural land. His company currently used it in most sales of agricultural property. He believed that selling the property only as a whole excluded some potential buyers. He stated that he and Mr Wilson had reached agreement as to a guide price for the property as a whole and he saw no difficulty in agreeing between themselves a guide price for each of the five lots.

[12] Mr Mallon was cross examined on the basis that he had changed his opinion from that expressed in his first two reports where he had not suggested any “lotting” of the property. Mr Mallon said he had not changed his opinion. In his first two reports he had been asked simply to value the property. It was only in his third report that he was asked to recommend a marketing strategy. I accepted this explanation and therefore decline to accord his report less weight because of this factor.

[13] One property had been put to Mr Wilson in cross examination as what is often referred to as a comparable. Mr Wilson rejected it, in my view for good reason, as a genuine comparable. When it came to Mr Mallon giving evidence, Mr Mallon qualified how this property should be viewed and suggested that it was simply offered as an example of a property where a “lotting” approach had been adopted and not as a true comparable.

[14] In terms of difficulties with selling the property as a whole entity, Mr Mallon considered that one issue might be that a potential buyer might already have a home and might not wish to purchase the property if it included a home. For that reason his proposal was to separate the matrimonial home as one lot but to add half a field to it as a lot so as to

provide reassurance to a potential purchaser that, if purchased, his property would not be entirely surrounded by chickens. Mr Mallon was cross examined as to whether it was the husband had suggested that the half a field ought to be added to the lot with the matrimonial home. He stated that it was his idea and not that of the husband. Counsel cross examined him on the basis of whether it might be of value to use that half field as somewhere where another dwelling might be built upon. Mr Mallon gave evidence that no one had suggested to him that there were any planning issues to be considered. He suggested that if this was a viable option then the husband and the wife should make a joint planning application and, if successful, this would justify marketing the property in six lots rather than five.

[15] The independence of Mr Mallon as a witness, like that of Mr Wilson, was also attacked in cross examination. Mr Mallon was cross examined on the basis that his approach of selling the property in various lots was adopted only after discussion with the husband and had been adopted as a means of allowing the husband to bid for the matrimonial home, which he was desperate to retain. I was shown an email which seemed to indicate that in fact Mr Mallon had been informed by his client that the husband did want to keep the matrimonial home. Mr Mallon denied that the expression of this view by the husband had influenced his approach. He had independently come to the view that “lotting” was the best approach. I was satisfied that Mr Mallon did not adopt the approach simply because it coincided with what his client wanted. He adopted it because he believed that it made sense in terms of maximising the amount which might be achieved in a sale because it would be likely to bring in new bidders which sale of the property in one lot would not achieve.

CONCLUSION

[16] Mr Wilson agreed that he had no experience or qualifications in the poultry business. He conceded in cross examination that he did not know whether there were other approaches to egg production other than a free range approach. He also conceded that non-free range purchasers might be interested in the property, he could not therefore exclude the possibility. I asked Mr Wilson how he had come by the RSPCA Welfare Standards. He very honestly immediately responded that the wife had provided it to him. Despite his immediate honesty when questioned, I consider that his inclusion of the RSPCA Welfare Standards in his written report, without identifying that it had been provided to him by the party who was instructing him and the use of the language compromised his independence before me as a witness. Furthermore, he had stepped outside the realm of his expertise. The argument about the land available for the chickens was the wife’s argument. It was effectively her voice coming out of his mouth. For this reason I would have been inclined to accord Mr Wilson’s evidence less weight than that of Mr Mallon. However because of my conclusions as to the reasoning provided by

the two witnesses, which I set out below, it was not necessary to reach a decision on this basis.

[17] Valuations and marketing are not an exact science. In terms of whether valuations are accurate, Mr Wilson said “None of us can really tell until we put it up for sale.” In his evidence Mr Mallon said “You don’t know until you put a property on the market whether there are going to be buyers for the entirety of it or whether it’s likely to be split up.” In my view, Mr Mallon’s approach of dividing the property into five lots and allowing bids for the whole property or one or more of the lots is the approach which is logically more likely to lead to the highest offer or combination of offers. I base that conclusion on the reasoning presented by the two witnesses.

[18] Mr Wilson provided potentially good reasons for not separating the matrimonial home and the poultry units into separate lots and Mr Wilson may be correct in his thinking. It may be that when the property is marketed there may be a number of offers for the property as one entity and very few offers for individual lots. Crucially, however, no evidence was offered by Mr Wilson that adopting an approach of marketing the property in a variety of lots would have any negative effect in terms of either reducing the number of bidders or reducing the price that potential bidders were willing to offer. Mr Mallon gave evidence that the “lotting” of the property would be likely to draw in a greater number of bidders to the process and that this competition may have the effect of increasing the achievable sale price. He may be right or he may be wrong. If “lotting” does not have this effect nothing is lost. On the other hand if Mr Mallon is correct there is everything to be gained. It was clear from the hearing that the husband wished to try and retain the matrimonial home and may make a bid for it if the property is “lotted”. It was also clear that the wife had suspicions and concerns that the approach he wished to adopt towards the marketing might either prevent, or lead to a delay, in the sale of the property. I did not find any evidential basis for those concerns. However they can be assuaged by the incorporation of a closing date for bids.

[19] In conclusion, I prefer Mr Mallon’s reasoning that the goal of maximising the price obtainable in a sale of the land is more likely to be achieved by the means of offering the property both as an entire entity and, alternatively, in lots because that marketing approach is likely to draw in additional bidders. Mr Wilson offered no reasoning to the contrary. It is of course the reasoning of expert witnesses that is often critical in the assessment of expert evidence. As Jacob LJ said in *Schlumberger Holdings Ltd (a company incorporated in the British Virgin Islands) v Electromagnetic Geoservices AS* [2010] EWCA Civ 819

“What really matters in most cases are the reasons given for the opinion. As a practical matter a well-constructed expert's report containing opinion evidence sets out the

opinion and the reasons for it. If the reasons stand up the opinion does, if not, not. “

[20] Accordingly I order that the property be offered for sale in five lots as recommended by Mr Mallon. If the parties agree that they wish to apply for planning permission so as to try and increase the value of any portion of the land, then the property may be offered for sale in six lots. As part of the marketing approach a firm closing date for bids to be made shall be agreed. On the day following the closing date the total of all the individual bids for the various lots shall be calculated and compared with those bids for the property as an entirety. If the bid for the entire property is greater than the total of the bids for the various lots, then the bid for the entire property shall be accepted.