Neutral Citation No. [2009] NICh 7 | *Ref:* **McCL7600**

Judgment: approved by the Court for handing down | *Delivered:* **30/7/09**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

_____

BETWEEN:

JUDE DOHERTY

Plaintiff;

-and-

PAMELA POSNETT
and
SUZANNE POSNETT

Defendants.

_____

McCLOSKEY J

I INTRODUCTION

[1] These are inter-related interlocutory applications, certified urgent, brought in a litigation context of partnership dissolution dispute. There are three basic matters which are undisputed. The first is that the Plaintiff and the first-named Defendant were formerly partners. The second is that their partnership has been validly dissolved. The third is that the sole partnership asset is a showjumping mare, known as "Touchable", in which the Plaintiff and the first-named Defendant have equal shares. The second-named Defendant, who is the daughter of the first-named Defendant, has been the habitual rider of the mare for some time.

[2] By the Writ of Summons, issued on 1st July 2009, the relief sought by the Plaintiff is:

(a) A declaration of equal partnership in the ownership of the mare.

(b) An order for the winding up of the affairs of the partnership and the taking of all necessary accounts and inquiries.

(c) Alternatively, a declaration of joint ownership in equal shares of the mare.

(d) An injunction restraining the Defendants from competing the mare in horse riding events, without the consent of the Plaintiff.

(e) An order for delivery up of the mare to the Plaintiff and, thereafter, sale in accordance with the directions of the court.

At this juncture , the main focus is on (d).

[3] The diametrically opposing views of the parties about how the mare should be managed and promoted at this juncture are reflected in the differing forms of interim relief which they seek. The parties' respective counsel have, helpfully, prepared draft orders. The draft order which the Plaintiff invites the court to make is incorporated as Annex 1 to this judgment. The Defendants' draft order is contained in Annex 2. The primary form of interim relief sought by the Plaintiff is an order restraining the Defendants from entering the mare in competition, in particular the forthcoming Dublin Horse Show, a well known annual event which is scheduled to begin during week commencing 3rd August 2009. The Plaintiff further seeks an order that the mare be delivered up to him and sold thereafter by him. In contrast, the Defendants seek an interim order which, fundamentally, permits them "*… to compete the mare … in the eight year and over classes at the RDS Dublin Horse Show 2009 … to be ridden by the second Defendant*". Most of the other provisions in the Defendants' draft order relate to the appointment of a joint agent whose main responsibility would be to endeavour to sell the mare and matters ancillary to such appointment. The order would also permit the Defendants to advertise the mare for sale and, in the event that a sale is not effected within the month of August, to authorise its sale without reserve at the Goresbridge Sport Horse Performance Sale in September 2009.

II THE EVIDENCE

[4] The adjudication of the court on these competing applications is based upon the affidavit evidence which has been presented by the parties. There was no application to cross-examine any deponent. As highlighted above, there is some common ground, both factual and legal, between the parties. It seems to me that the main areas of dispute relate substantially to matters of evaluative judgment, opinion and prediction.

[5] The position adopted and case made by the Plaintiff are conveniently digested in the skeleton argument of his counsel, Mr. McLaughlin, on which the following summary is based. The Plaintiff is a breeder and producer of sporting and eventing horses. He owns his own stables and has carried on this business on a part time basis for many years. He retired from his previous employment in 2008 and

now works in his stables on a full time basis. The Plaintiff owns a half share in a showjumping mare named "Touchable". The other half is owned by Pamela Posnett. The Defendants are mother and daughter. Pamela Posnett is the owner of a half share in the mare. Her daughter Suzanne is a rider who has competed the mare during its showjumping career. The Defendants currently have possession of the mare, at their home in Killinchey, Co.Down. The mare was purchased by the Plaintiff initially in his own name in 2004. He sold a half share to Eileen Nugent. Thereafter Eileen Nugent sold her half share to Pamela Posnett, with the consent of the Plaintiff. At the time, Suzanne Posnett was employed by the Plaintiff. Her job was to prepare the mare and also to ride it in competition, along with other horses owned by the Plaintiff. Prior to the commencement of these proceedings, the Plaintiff always understood that Eileen Nugent had sold her half share to Suzanne Posnett. It is now clear from the affidavits filed by the Defendants that the owner is Pamela Posnett.

[6] The Plaintiff further asserts that the mare is unique and of very high showjumping potential. It is the firm belief of the Plaintiff that the mare is capable of jumping at the highest international level and, if produced for sale in the most appropriate manner, could achieve a very substantial price. Substantial interest has been shown in the mare to date, by some very influential people within the horse industry. The Plaintiff is very keen to attempt to sell the mare and to explore the best opportunities for doing so. The mare has now qualified to compete in the Dublin Horse Show, to be ridden by Suzanne Posnett. This is the biggest and most prestigious showjumping event in Ireland. It has qualified in the category for horses aged eight years and over. This is the highest category of competition at the show. The fences are at the highest level of 140 - 145cm and the set up of the course is the most technically difficult. Suzanne Posnett, it is asserted, has very limited experience, either generally or on this horse, of riding <u>at this level</u>.

[7] According to the Plaintiff, irreconcilable differences have now developed between the parties about the future of the mare. The main focus of those differences is whether Suzanne Posnett should compete the mare at the Dublin Horse Show in August. The Plaintiff's position may be summarised as follows:

(a) This is a mare of unique ability and quality. It is his considered view that it is a "once in a lifetime" horse for a breeder and producer. It has the potential to compete at the highest international level and to be sold at a very substantial price.

(b) An experienced rider can make an enormous difference to the performance of a horse. A large part of that performance in showjumping derives from the timing and approach of the horse to fences. By taking off at the right speed and from the right point, performance can be increased enormously. This is a matter of considerable skill, expertise and experience.

(c) The category in which the horse is entered in the Dublin Horse show is the highest category, with the highest fences and most technically demanding course.

(d) Suzanne Posnett is a good rider, who has demonstrated considerable ability in producing the mare to its current position. However, she is a young rider whose experience has been gained riding an exceptionally good horse in lower levels of competition. She does not have sufficient experience of competition in national Grand Prix events or of jumping over fences of this height on such technically demanding courses.

(e) Where the horse is not confident, it can refuse the fence or be injured. A loss of confidence can take a long time to recover and can have a dramatic negative effect upon the value of the mare. The worst possible time for this to occur is in public competition. The Dublin Horse Show is the biggest and most prestigious event in the Irish showjumping calendar. It is also an event at which the Defendant will be jumping in front of a very large crowd and under high pressure.

(f) It is an unacceptable risk to the preservation and maximisation of the value of the mare to allow Suzanne Posnett to compete it at the Dublin Horse Show. It is the worst and most public place for anything to go wrong.

(g) The highest prices for horses are normally obtained by way of consensual private sale, not through public auction. The best means by which to maximise the value of a mare of this quality is to allow it to be ridden by an experienced rider who has competed at the highest international level. Not only does this allow the ability of the horse to be showcased, but can also open up international markets which would not otherwise be available if the mare is ridden in regional competition within Ireland.

(h) It is the Plaintiff's desire for the horse to be given to Conor Swaile. He a top international rider of undisputed ability and experience. He also runs a business in producing horses for sale and has a business partner who acts as an agent in arranging horse sales with considerable experience in selling to the international market. Conor Swaile has already been contacted. He is familiar with the mare and has indicated a willingness to accept it, ride it and produce it for sale, provided it is either with the consent of the parties or pursuant to an order of the Court.

[8] The affidavits filed on behalf of the Defendants contain quite strongly competing views, proposals and predictions. Fundamentally, the Defendants contend that the RDS Horse Show in August 2009 is the ideal venue for "show casing" the mare with a view to sale. It is further suggested that the second-named Defendant is the only appropriate rider, in the circumstances prevailing. While it is conceded that Conor Swaile is an experienced rider, of international repute, belonging to a rank higher than that occupied by the second-named Defendant, it is suggested that if Mr. Swaile did not ride the horse successfully, this would have a detrimental impact on its sale value. Conversely, if the horse is ridden by the second-named Defendant, any such failure is more likely to be attributed to her inexperience, rather than the qualities and abilities of the animal. On the other hand, a successful performance at the hands of the second-named Defendant would project the horse as capable of being ridden successfully at a high level by a female rider.

[9] The Defendants further highlight the delays which would be occasioned by the Plaintiff's proposal and the increased costs associated therewith, for which the second-named Defendant would ultimately be half liable. The Plaintiff's proposal is also likely to prolong the winding up process, thereby increasing the potential for further disputes between the parties about the management and projection of the mare. The second-named Defendant's riding success in qualifying the mare for the RDS Horse Show is emphasized. In support of their case, the Defendants rely on the testimonials of several third parties, which form part of the evidence. These contain opinions to the effect that the second-named Defendant is a highly competent rider possessed of sufficient ability and experience to compete the mare successfully at the forthcoming event. One of the contributors predicts that the second-named Defendant could ride the mare to victory in its class at the RDS. Another attests to the second-named Defendant's ability to ride any top class horse at any level of competition in Ireland.

[10] The second-named Defendant details the mare's performance in competition in partnership with this Defendant as rider during the period of the last few years. She highlights that this demonstrates the mare's ability to participate in competitions where the fences are up to 1.5 metres high. The class in which the mare would compete at the forthcoming RDS show has fences in the range of 1.40 to 1.45 metres in height which, it is suggested, the mare will negotiate with "*little difficulty*", in the eight year and over category. It is further highlighted that members of the showjumping community are aware that the mare has qualified for the RDS Show, with its associated publicity. Any failure by the mare to participate in the event would stimulate speculation about its present condition and abilities, with consequential detriment to its sale value. Non-participation would also create a lacuna in its jumping record. In short, the prediction made on behalf of the Defendants is that if the mare competes its value will, as a minimum, be preserved and maintained, whereas non-competing would be likely to diminish its value.

III RELEVANT STATUTORY PROVISIONS

[11] In the absence of agreement between partners, the affairs of a partnership are to be managed in accordance with the Partnership Act 1890 ("*the 1890 Act*"). This proposition is not disputed by any of the parties. Section 26(1) provides:

> "*Where no fixed term has been agreed upon for the duration of a partnership, any partner may determine the partnership at any time on giving notice of his intention to do so to all the other partners*".

Section 32 regulates the method of dissolving a partnership. The topic of partnership property is addressed in Section 20(1), which provides:

> "*All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property* ***and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.***"

[Emphasis added].

[12] Section 38 of the 1990 Act seems to me germane in the present context. It provides:

> "*After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution* ***so far as may be necessary to wind up the affairs of the partnership****, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.*"

[Emphasis added].

The statutory matrix in the present litigation context also includes Section 91(1) of the Judicature (Northern Ireland) Act 1978, which provides:

> "*The High Court and, in matters within its jurisdiction, the County Court may at any stage of any proceedings –*
>
> *(a) order a sale of any property;*

(b) grant a mandatory or other injunction; or

(c) appoint a receiver

in any case where it appears to the court to be just and convenient to do so for the purposes of any proceedings before it …"

It is clear from Section 91(2) that the court enjoys wide powers in the formulation of appropriate terms and conditions, where it exercises its jurisdiction under subsection (1).

Finally, Order 29, Rule 2(1) of the Rules of the Supreme Court provides:

> "*On the application of any party to a cause or matter the court may make an order for the detention or preservation of any property which is the subject matter of the cause or matter …*".

IV THE PARTIES' COMPETING CONTENTIONS

[13] On behalf of the Plaintiff, Mr. McLaughlin submitted, relying on Section 38 of the 1990 Act, that neither of the former partners is entitled to exclude the other from participation in the partnership during this winding up period. He highlighted the statement of Hoffmann LJ in ***IRC –v- Gray*** [1994] STC 360. He contended that Section 38 imposes a substantial limitation on the "*rights and obligations*" of partners in a dissolution context. He also drew attention to the test of *necessity* enshrined in Section 38. He argued that since neither party owns the sole partnership asset absolutely, neither can exclude the other from deploying the asset either in accordance with the terms of the partnership or for the purpose of dissolution. Thus the course of action proposed by the Defendants would frustrate the Plaintiff's rights. In passing, the burden of Mr. McLaughlin's submissions, properly analysed, seem to me to acknowledge that the court must make its own assessment of the competing proposals, opinions and predictions of the parties.

[14] On behalf of the Defendants, Mr. McEvoy countered any suggestion that the Defendants' proposal for the deployment of the mare in the immediate future is imbued with uncertainties and imponderables. He emphasized those aspects of the Defendants' affidavit evidence about which there is no substantial dispute. While he acknowledged that, as regards the Plaintiff's application, the court should take into account the guidelines prescribed by Lord Diplock in ***American Cyanamid –v- Ethicon*** [1975] AC 396, these guidelines are premised on the vista of a trial on the merits at a later stage, which will finally determine the rights of the parties – whereas, in the present context, there will be no future determination by the court of the question of whether the mare should compete in the 2009 RDS Horse Show. Developing this submission, Mr. McEvoy drew attention to the statement of Laddie J in ***Series 5 Software –v- Clarke*** [1996] 1 All ER 853 [at pp 865-866 especially] and the

emphasis on the "*balance of the risk of doing an injustice*" in the judgment of May LJ in ***Cayne –v- Global Natural Resources*** [1984] 1 All ER 225. The evidence, it was submitted, supports the view that in the non-competing scenario, there is a *probability* that the mare's value will diminish, whereas in the competing scenario, any loss of value is a mere *possibility*, entailing no positive dimension. Mr. McEvoy was disposed to accept that the Defendants' proposal for the deployment of the partnership asset in the immediate future requires an order of the court approving the course of action envisaged.

[15] Both parties also relied on various passages in ***Lindley, the Law of Partnership***. In particular, the court's attention was drawn to pp. 396-401, 637 and 657.

V CONCLUSIONS

[16] These applications were heard by the court on 28 and 29 July 2009. On the second day of hearing, there were two developments, each of some significance. Firstly, Mr McLaughlin informed the court that his client's instructions now are that he is no longer espousing the sale mechanism noted in paragraph [7] (h) and paragraph [8] above. The Plaintiff now accepts, evidently, that this is not a viable option. The Plaintiff is to be commended for candidly conveying this to the court. Secondly, the court was informed of the Defendants' intentions to compete the mare in a County Kildare show jumping event beginning in two days time, on 1 August 2009, with a registration deadline of 4.00 pm on 30 July. Having regard to the issues raised by these interlocutory applications, and bearing in mind that no explanation for the omission was proffered, the failure of the Defendants to address this issue fully in their very detailed affidavits is reprehensible. The materiality of this matter is self-evident and the manner and timing of its disclosure are likely to be inimical to the prospects of the parties selling the partnership asset and settling their differences by consensual arrangements.

[17] In my view, the provision of the 1990 Act engaged centrally by the parties' competing applications is Section 38, set out in paragraph [12] above. I consider that the statutory test of *necessity* is to be contrasted with, for example, what is merely *desirable* or *expeditious*. Necessity, in my view, denotes a somewhat higher threshold. Notably, there seems to be a dearth of authority on this issue. In circumstances where the views and proposals of the former partners regarding the appropriate deployment and destiny of the sole partnership asset and setting their differences are polarised, as here, I consider that the court must form its own judgment.

[18] As regards the Plaintiff's application, the court must form its view regarding the well established twin criteria of good arguable case and the balance of convenience. This requires an evaluative judgment, based on the court's assessment of the evidence submitted by the parties. The nature of the dispute which the parties have submitted to the court for resolution is deserving of some comment. It

is abundantly clear that the court is not merely invited, but required, to intervene in a specialised field. Self-evidently, the court possesses no particular expertise in this sphere. The apparent polarisation of these former partners and their consequential failure to agree on basic matters relating to the management, competition and projection of the partnership mare has the consequence that an inexpert judicialised tribunal has the task of adjudicating. This inevitably generates the risk that one or both parties may consider the adjudication to some extent capricious or arbitrary. Given the specialised nature of the field to which this dispute belongs, this seems to me unavoidable. Furthermore, it renders the failure of the parties to resolve their differences consensually all the more regrettable.

[19] In my judgment, taking into account Section 38 of the 1990 Act, the Plaintiff has failed to overcome the threshold for securing the grant of the injunctive relief sought by him. His case has been weakened, while the Defendants' case has been consequentially fortified, by the withdrawal of his main counter-proposal, noted in paragraph [16] above. The consequence of this is that there are two relatively stark alternatives before the court. The first is that the mare should, figuratively, be placed in cotton wool for the foreseeable future, confining its activities to basic maintenance, training and like matters. The second is that the mare should compete actively at show jumping events, including the internationally renowned RDS in August. I take into account the mare's jumping record and the general pattern of its show jumping activities during recent years. Any moratorium on such activities at this stage would represent a significant departure from its previous history. Furthermore, it is undisputed that there is an expectation in the show jumping community that, having qualified for the RDS event, the mare will duly compete. Insofar as there is any objective evidence before the court, the contents of the various testimonials run contrary to the Plaintiff's quest for injunctive intervention and tend to favour the Defendants' counter proposal, at least in part.

[20] Balancing all of these matters, I find that, in the circumstances prevailing and at this point in the history of the mare, its participation in the two forthcoming competitions (the County Kildare event beginning on 1 August 2009 and the RDS the following week) constitutes a step which is "*necessary to wind up the affairs of the partnership*". The Plaintiff has failed to establish a good arguable case to the contrary. The Plaintiff has also failed to establish a good arguable case that it is necessary for the winding up of the partnership affairs that the mare be maintained and trained only for a period of approximately one month, pending the Goresbridge auction in September 2009. Furthermore, given the considerations which I have highlighted, I find that as regards the balance of convenience, the pendulum swings quite firmly in favour of the Defendants.

[21] I therefore refuse the Plaintiff's application for injunctive relief. I then turn to consider the Defendants' application, which seeks an order in the terms summarised in paragraph [3] above and contained in Annex 2 hereto. In short, the Defendants are proposing an elaborate and potentially expensive scheme, in circumstances where it is accepted on their behalf that the appointment of an agent (whether one

agent or several) is not a necessary pre-requisite to the possible sale of the mare in the forum of the RDS or thereafter. Moreover, to accede to the Defendants' application could have the undesirable consequence of restricting the sale opportunities and options during the foreseeable future and would introduce a degree of inflexibility. It would also, in my view, discourage the parties from active co-operation and conjoined efforts in bringing about that which is manifestly in their joint interests, that is to say the sale of the mare at the best price reasonably obtainable. Further, it is common case that one consequence of refusing the Defendants' application is that market forces and influences can, without any formal or rigid model, take effect and could generate a suitable purchase proposal. Finally, when one adds the factor of prematurity, taking into account the fluctuating nature of the present situation, it seems to me that the case for refusing the Defendants' application is compelling.

[22] In the result:

(a) I refuse the Plaintiff's application for interim injunctive relief.

(b) I refuse the Defendants' application for an order for sale under Section 91 of the Judicature Act.

(c) The case will be listed for mention again on 13 August 2009, if the parties so request.

(d) If any further urgent intervention by the court is required in the interim, the parties will be at liberty to take the appropriate steps.

[23] While I am minded to make no order as to costs inter-partes, there will be an opportunity to make further submissions on this discrete issue.

Annex 1

No. of 2009

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION

Between

Jude Doherty

Plaintiff

-and-

1. **Pamela Posnett**
2. **Suzanne Posnett**

Defendants

Before the Honourable Mr Justice
(in Chambers)

This day of 2009

NOTICE TO THE DEFENDANT

1. This Order may prohibit you from engaging in certain activity or require that you take certain actions, whether by yourself or through others. You should read it carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge the Order.

2. If you disobey this order you may be found guilty of Contempt of Court and may be sent to prison or fined and your assets may be seized.

THE ORDER

An application was made on the date of this order by Counsel for the Plaintiff to the Judge who heard the application supported by the affidavits listed in Schedule 1 and accepted the undertakings in Schedule 2 at the end of the Order.

IT IS ORDERED THAT:

1. Pending the trial of this action or the further order of the Court, the Defendants be restrained from riding the mare "Touchable" in competition or entering it into competition, in particular the Dublin Horse Show, without the consent of the Plaintiff.

2. The mare "Touchable" shall forthwith be delivered up to the Plaintiff and thereafter sold by the Plaintiff.

3. Such further or other relief as appears to the Court to be appropriate.

4. Costs.

DURATION OF THIS ORDER

This order shall remain in force until judgement in this action unless before then it is varied or discharged by Order of the Court.

VARIATION OR DISCHARGE OF THIS ORDER

The Defendants (or anyone notified of this order) may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but anyone wishing to do so must first inform the Plaintiff.

NAME AND ADDRESS OF PLAINTIFF'S SOLICITORS

The Plaintiff's solicitor's address is:

Millar Shearer Black
40 Molesworth Street
Cookstown, BT80 8PH

EFFECT OF THIS ORDER

A Defendant who is an individual who is ordered not to do something must not do it herself or in any other way. They must not do it through others acting on their behalf or on instructions or with their encouragement.

1. *Effect of this Order*. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

2. *Effect of this Order outside Northern Ireland*. The terms of the order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable by a Court in the relevant country and then they are to affect him to the extent that they have been declared enforceable or have been enforced UNLESS such person is:

    (a) a person to whom this order is addressed or an officer or agent appointed by power of attorney of such a person; or
    (b) a person who is subject to the jurisdiction of this Court and (i) has been given written notice of this order at his residence or place of business within the jurisdiction of this Court and (ii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order.

SCHEDULE 1

Affidavits

The Plaintiff relied upon the following affidavits:

1. Affidavit of Jude Doherty.

SCHEDULE 2

Undertakings given to the Court

1. If the Court later finds that this Order has caused loss to the Defendants and decides that the Defendants should be compensated for that loss, the Plaintiff will comply with any order the Court may make.

2. Anyone notified of this order will be given a copy of it by the Plaintiff's solicitor;

3. If for any reason this Order ceases to have effect the Plaintiff will forthwith take all reasonable steps to notify, in writing, any person any person or company to whom he has given notice of this Order, or who had reasonable grounds for supposing may act upon this Order, that it has ceased to have effect;

4. The Plaintiff will not, without the leave of the Court, begin proceedings against the Defendant in any other jurisdiction or use information obtained as a result of an order of the Court in this jurisdiction for the purpose of a civil or criminal proceeding in any other jurisdiction;

5. The Plaintiff will not, without the leave of the Court, seek to enforce this order in any country outside Northern Ireland or seek an order of a similar nature including orders conferring a charge or other security against the Defendants or the Defendants assets.

Annex 2

2009 No. 70551

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Before the Honourable Mr Justice McCloskey (in Chambers)

This day of July 2009

BETWEEN

JUDE DOHERTY

Plaintiff

AND

PAMELA POSNETT

First Defendant

AND

SUZANNE POSNETT

Second Defendant

UPON APPLICATION by Counsel for the Plaintiff and Counsel for the Defendants for Orders in the nature of an injunction;

AND UPON HEARING Counsel for the Plaintiff and Counsel for the Defendants;

AND UPON READING the affidavits of the Plaintiff, First Defendant and Second Defendant and the documents recorded on the Court file as having been read.

IT IS ORDERED that:

(1) the Defendants are at liberty to compete the mare known as Touchable in the 8 year and over classes at the RDS Dublin Horse 2009 with Touchable to be ridden by the Second Defendant;

(2) that Barry O'Connor be appointed as joint agent of the Plaintiff and First Defendant in respect of Touchable with sole responsibility during the period of his appointment for liaising with all potential purchasers and interested parties but without authority to conclude a sale;

(3) that the costs and fees associated with the appointment of Barry O'Connor be borne equally and jointly by the Plaintiff and the First Defendant;

(4) that the remuneration of Barry O'Connor be agreed between the parties and in default thereof to be fixed by the Master;

(5) that the appointment of Barry O'Connor as agent shall cease on the 1st of September 2009 (being one week prior to the commencement of the Goresbridge Sport Horse Performance Sale in September 2009) or sooner

by express written agreement of the Plaintiff and the First Defendant;

(6) that during the period of his appointment the parties shall refer all expressions of interest in Touchable to Barry O'Connor;

(7) that the parties shall facilitate all reasonable requests by potential purchasers introduced by Barry O'Connor to view and try Touchable either at the RDS Showgrounds in Dublin during the Horse Show or at the Defendants' premises thereafter;

(8) that save as ordered in the next clause Touchable shall not be sold without the prior written agreement of both parties;

(9) that in the event that a sale of Touchable has not been agreed on or by the 1st of September 2009 Touchable shall be sold without reserve at Goresbridge Sport Horse Performance Sale in September 2009 and all the parties hereto will have liberty to bid and each party hereto shall sign all such documents as may be required to effect such sale;

(10) that the costs associated with the entry of Touchable in Goresbridge Sport Horse Performance Sale in September 2009 will be borne equally and jointly by the Plaintiff and the First Defendant;

(11) that an advertisement in the terms of Schedule 1 be placed forthwith and in any event within 2 days by the First Defendant in the next available publication of Irish Field and Horse & Hound;

(12) that the costs associated with the aforesaid advertisements relating to Touchable will be borne equally and jointly by the Plaintiff and the First Defendant;

(13) that in the absence of agreement between the parties the net proceeds of the sale of Touchable (after deduction of proper agents' fees and sale costs) shall be lodged in Court to the credit of this action "Jude Doherty v Pamela Posnett & Samantha Posnett - 2009 No. 70551 Proceeds of sale of partnership property";

(14) that the issue of accounts be adjourned to the Master/Trial Judge;

(15) liberty to apply;

(16) costs.

Signed:_____

Proper Officer

Time occupied:

SCHEDULE 1

For sale: exceptional 8 year old "Touchable". This mare by Touchdown out of a mare by Irco Mena has competed nationally and internationally for Ireland. As an 8 year old Touchable has competed at Premier Grand Prix level and demonstrated fantastic ability and potential. As a 7 year old this mare competed in Lanaken, Belgium. Her career to date includes the following success:

1. National Balmoral Championship – 6 year Champion 2007;
2. 4th in the Boomerang class, Millstreet, 2008;
3. 4th in the National Championships, Barnadown, 2008.

All enquiries to Barry O'Connor – telephone (**insert**).