

**Neutral Citation No. [2014] NIMaster 16**

Ref:

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

Delivered: **05/11/2014**

2013/45548

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION (BANKRUPTCY)

RE NEIL UREY (A BANKRUPT)

IN THE MATTER OF THE PARTITION ACTS 1868-1876

BETWEEN:

**THE OFFICIAL RECEIVER FOR NORTHERN IRELAND**

Applicant:

and

**JULIE ANNE UREY**

Respondent:

## **INTRODUCTION**

### **MASTER KELLY**

[1] The Official Receiver applies for inter alia sale in lieu of partition of premises situate and known as 2A, Ballydoonan Road, Greyabbey, Co Down with the net proceeds of sale being divided between the Applicant and Respondent in equal shares or in such other shares as the court sees fit. The Respondent in resisting the relief sought by the Official Receiver relies on a matrimonial agreement entered into by herself and the Bankrupt in which the Bankrupt agreed to transfer his interest in the matrimonial home to her. The matrimonial agreement was entered into and made the subject of a final order two days before the bankruptcy order was made.

[2] At the hearing the Official Receiver was represented by Mr Gowdy and the Respondent by Ms McGrath. I wish to express my thanks to counsel for their very helpful skeleton arguments and oral submissions at hearing. While I have taken into account all of the relevant authorities submitted (even if I do not make express reference to each one), I should say that although both parties for various reasons made reference to the recent case of Official Receiver -v-Gallagher [2014] NICh 6, I consider that a comparison between these two cases would not prove useful: the two cases are very different in terms of their respective facts, circumstances and the relief sought by the Official Receiver.

[3] For present purposes, it is not a matter of dispute that the ancillary relief proceedings involving the Bankrupt and the Respondent were listed for full hearing on 17th December 2012. At the hearing Master Redpath, having considered the evidence in the case, gave an indication that he was inclined to order that the Bankrupt retain his business and the Respondent the matrimonial home. These appear to have been the extent of the matrimonial assets. The parties were then afforded an opportunity to consider that indication before the case was formally opened to the Master.

[4] The parties subsequently reached agreement in accordance with the indication given by Master Redpath. The agreement was then approved by Master Redpath and a final order granted. Against that background the relevant facts and chronology are as follows:

(i) the Bankrupt and the Respondent entered into an agreement by consent on foot of ancillary relief proceedings on 17th December 2012;

(ii)The agreement provided for (a) the voluntary transfer of the Bankrupt's interest in the matrimonial home to the Respondent, (b) the Bankrupt to retain his business, and (c) full and final settlement of any claims the parties may have against each other on foot of the relevant matrimonial legislation;

(iii)The agreement was approved by Master Redpath on 17th December 2012 and made the subject of a final order;

(iv)On 17<sup>th</sup> December 2012 there was a pending bankruptcy petition against the Bankrupt which had issued on 15<sup>th</sup> November 2012 in connection with a failed Voluntary Arrangement;

(v)The petition was due to be heard on 19<sup>th</sup> December 2012 and a bankruptcy order was anticipated by the Bankrupt and the Respondent;

(vi) Master Redpath, although aware of the petition, was not seised of it;

(vii) The supervisor of the IVA was not involved in the matrimonial proceedings;

(viii) The matrimonial agreement did not acknowledge the bankruptcy proceedings;

(ix) The Bankruptcy order was made on 19<sup>th</sup> December 2012;

[5] While the Respondent contends that the terms of the agreement represented a 60/40 split of the value of the matrimonial assets in her favour, the Official Receiver contends that the bankrupt's business, which is that of a self-employed fisherman, had little or no realisable value. He argues that the bankrupt's interest in the matrimonial home was, on the other hand, of significant value; and the Official Receiver argues that it was never transferred to the Respondent at all.

### **The Official Receiver's application**

[6] Counsel is agreed that for the purposes of this application there are two issues before the court. The first issue is the question of whether the terms of the matrimonial order of 17<sup>th</sup> December 2012 were effective to transfer an equitable interest in the Bankrupt's share in the matrimonial home to the Respondent. The second issue is the question of whether if the order was so effective, that disposition is void under Article 257 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order").

### **The relevant legal principles**

[7] Articles 25 and 26 of the Matrimonial Causes (Northern Ireland) Order 1978 ("the 1978 Order") are the relevant authorities for the making of financial provision orders in matrimonial cases. Article 25 (1) (a),(b) & (c) of the 1978 Order provides for the making of lump sum and periodical payment orders. Article 26 provides for the making of property adjustment orders. Both Article 25 and Article 26 require a decree absolute to issue before any settlement or order takes effect. Article 25(5) of the Order provides:

"Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under (1)(a), (b) or (c) on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute."

Article 26 (3) also provides:

“Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under this Article on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.”

The mandatory application of Articles 25(5) and 26(3) means that no property right can be created on foot of either an agreement or order until a decree absolute is granted. Therefore until such times as a decree absolute is extracted no settlement or order has any force or effect by itself.

[8] Article 257 of the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”) provides:

“(1)Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court or is or was subsequently ratified by the Court.

(2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This Article applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Articles 278 to 308, of the bankrupt’s estate in a trustee.

### **The consent order of 17th December 2012 under the matrimonial scheme**

[9] In the present case the consent order made a final order on 17th December 2012 provided for the Bankrupt to voluntarily transfer his interest in the matrimonial home to the Respondent. In other words it provided for a property adjustment order by consent. In the circumstances, the order was subject to the provisions of Article 26(3) of the 1978 Order which means that no property right could have been created by the order of 17th December 2012 until a decree absolute was granted. That is because until such times as a decree absolute was extracted the order had no force or

effect by itself. In the circumstances, I find that a transfer in equity of the Bankrupt's share in the matrimonial home could not have been effected by the order of 17th December 2012 itself.

[10] On 19th December 2012 the bankruptcy order was made. This then brings us to the issue of the consent order within the context of the bankruptcy scheme.

### **The consent order of 17th December 2012 and the bankruptcy scheme**

[11] The consent order of 17th December 2012 was made after bankruptcy proceedings had commenced against Mr Urey on 15th November 2012 and before the bankruptcy order was made on 19th December 2012. Therefore the consent order was made after Article 257 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") had taken effect.

[12] Article 257 of the 1989 Order is limited to dispositions made in the period set out in Article 257(3). In this case the relevant period is 15th November 2012 to 19th December 2012. However during this period the Respondent had not obtained both a final order and decree absolute. Therefore the final consent order in the ancillary relief proceedings had not taken effect by operation of Article 26(3) of the 1978 Order. Therefore as at 19th December 2012 no property right in favour of the Respondent had been created, and no transfer in equity of the Bankrupt's share in the matrimonial home had taken place. Accordingly, no property disposition had been made by the Bankrupt under the relevant matrimonial scheme. That being so, in my judgment, no disposition of the Bankrupt's interest in the matrimonial home had been made as at the date of bankruptcy thereby vesting his interest in the matrimonial home in the Official Receiver.

### **Conclusion**

[13] For the reasons given I find that no disposition of the Bankrupt's interest in the matrimonial home took place prior to his bankruptcy. Thus the said interest vested in the Official Receiver by the making of the bankruptcy order on 19th December 2012. The Official Receiver is accordingly entitled to the relief sought in his application of 30th April 2013. There being no evidence that the Bankrupt and the Respondent's beneficial interests in the home are held other than the legal title, I find that the parties' interests in the said premises are held in equal shares. I shall now proceed to make an order in the terms of the summons.