**Neutral Citation No. [2014] NIMaster 5**

*Ref:* **2014NIMaster5**

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

*Delivered:* **12/03/2014**

12/096892

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION (BANKRUPTCY)
IN THE MATTER OF STEPHEN SNODDON , Bankrupt
IN THE MATTER OF THE PARTITION ACTS 1868-1876

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BETWEEN:

THE OFFICIAL RECEIVER FOR NORTHERN IRELAND

Applicant

and

1.STEPHEN SNODDON (otherwise Snodden)
2. MONICA FRANCES McSHANE

Respondents

**MASTER KELLY**

**INTRODUCTION**

[1] By application of 3rd September 2012 the Official Receiver, as trustee of the bankrupt's estate, seeks inter alia an order under Article 310 (2)(a)(i) of the Insolvency Northern Ireland) Order 1989 for leave to evict the bankrupt from premises situate and known as 60 Donard Drive, Lisburn ; and that the premises be sold in lieu of partition with the proceeds of sale divided in equal shares between the Official Receiver and the second respondent, or in such other shares as the court considers appropriate.

[2] Ms McShane, the second respondent, is the former partner of the bankrupt. From 1999 to May 2005, Ms McShane held the property in her sole name. In May 2005 the

property was transferred into the joint names of Ms McShane and the bankrupt. Ms McShane contends that this transfer was purely for a practical purpose and that there was no common intention that the parties would have a joint beneficial interest in the subject property. In the circumstances, Ms McShane resists the application contending that the she holds the full beneficial interest in the property and that the relief sought by the Official Receiver should therefore be refused.

[3] At the hearing of the application the Official Receiver was represented by Mr Gowdy and the second respondent by Mr Dunford. I wish to record my thanks to counsel as I was greatly assisted in the case by their helpful oral and written submissions.

**Background to the Official Receiver's application**

[4] By virtue of the provisions of the Insolvency (Northern Ireland) Order 1989 all assets held by the bankrupt as at the date of his adjudication (in this case 4th April 2011) vested in the Official Receiver, with such assets to be realised for the benefit of the bankrupt's creditors.

[5] Following the making of the bankruptcy order, the Official Receiver requested that the bankrupt complete a Preliminary Examination Questionnaire ("PEQ") and a statement of affairs setting out his assets and liabilities. These are important documents; a bankrupt's PEQ is completed under caution, and a statement of affairs is completed under oath. In both documents the bankrupt stated that he is the joint owner of 60, Donard Drive, Lisburn. In his PEQ, completed on 20th April 2011, the bankrupt also disclosed that prior to being made bankrupt he had unsuccessfully attempted an Individual Voluntary Arrangement with his creditors. The Official Receiver obtained a copy of the relevant IVA Proposal and statement of affairs wherein the bankrupt also stated that he is the joint owner of the subject property.

[6] The Official Receiver, having satisfied himself as to the legal title to the property, then carried out a valuation of the property. According to that valuation (as at an unspecified date), the property was worth £75,000. Ms McShane did not agree with this valuation and obtained her own. This valuation, which valued the property at £50,000 as at 25th September 2012, was served on the Official Receiver and no issue appears to have been taken with it. Certainly, at the hearing of this application, counsel appeared agreed that the equity in the property was modest, and I observe that the total amount charged against the property to the current Lender (Santander) is just under £40,000.

**The parties' case**

[7] The following chronological facts are agreed. In 1999 Ms McShane purchased the subject property from the Northern Ireland Housing Executive ("NIHE"). From 1999 to 2005 the property was held in her sole name. In 2002, Ms McShane began a

relationship with the bankrupt. In 2005, the bankrupt moved into Ms McShane's home. In or about May 2005, the property was transferred into the joint names of Ms McShane and the bankrupt. A joint mortgage was taken out on the property with Santander around the same time.

[8] The Official Receiver's case is essentially as follows:

- First, it is contended that the transfer of the property into the respondents' joint names was contemporaneous with them commencing cohabitation - with all the attendant shared expenses of that, including borrowing money for home improvements.

- Secondly, it is contended that Ms McShane could not have afforded to service the borrowings on the property based on her own modest income; and, further, that this is evidenced by the fact that Santander was not prepared to offer mortgage facilities to Ms McShane based on her sole income.

- Thirdly, it is contended that there was no declaration of trust drawn up by the parties at the time of the transfer to give effect to the case that the second respondent is now making. (While it seems that the same solicitor acted for both the bankrupt and Ms McShane in the course of the transfer, unfortunately discovery revealed that the parties' solicitor no longer retained the relevant file.)

- Lastly, it is contended that in his PEQ, Statement of affairs and IVA Proposal the bankrupt treats the property as an asset of his.

[9] In support of the Official Receiver's contentions, Mr Gowdy relied on **Jones v Kernott [2011] UKSC 53** wherein it is stated at 10:

> "The conclusions in Lady Hale's opinion {in *Stack –v- Dowden*}were directed to the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any mortgage, and where there is no express declaration of their beneficial interests. In such cases, she held that there is a presumption that the beneficial interests coincide with the legal estate. Specifically, "in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved": Lady Hale, at para 58; Lord Walker at para 33."

In summary, therefore, Mr Gowdy argued that the Official Receiver's case is that the respondents' interests follow the legal title, and that it is for Ms McShane to overcome the hurdle of persuading the court that their interests are held otherwise than the said legal title.

[10] In defending the Official Receiver's application, Ms McShane argued (and she was emphatic on this) that the sole reason the subject property was put into the joint names of herself and the bankrupt in 2005 was that it was the only means by which she could change mortgage providers at that time. It is her case that she wanted to do this in order to raise additional funds to carry out home improvements. Ms McShane contended that Santander (the Lender she had approached) was not willing to lend her the desired sum on the strength of her income alone. While Ms McShane acknowledged that her income is modest she contended that her lifestyle is also modest, and that consequently she could afford the mortgage payments from that modest income. However, she argued that as the bankrupt had the higher income of the two, they agreed to put the property into their joint names to enable her to secure the desired lending. Ms McShane argued that in doing this there was never any intention between the parties that the bankrupt would have any interest in the property.

[11] In essence Ms McShane's case is that there was no common intention between herself and the bankrupt that the bankrupt would have any interest in her home. Further, she argued that both she and the bankrupt were clear that the property was *her* home, regardless of the fact that he lived there. Moreover, she submitted that the bankrupt never expressed to her any views that would suggest that he thought otherwise. In summary, Ms McShane contended that her evidence was proof of (i), contrary intention and (ii), that she is entitled to the entire beneficial interest in the property.

**The relevant legal principles**

[12] Counsel helpfully agreed that:

> 1. The respondents' joint tenancy was severed by the bankruptcy of the first respondent and thereafter held by them as tenants in common;
>
> 2. The starting point for the determination of the respondents' beneficial interests in the premises is the legal title;
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> 3. The legal title is a presumption, capable of being rebutted if there is evidence of contrary intention;
>
> 4. The burden of proof that the respondents' interests are held other than the legal title rests with the party so contending. (Lord Hope: **Stack v Dowden [2007] UKHL 17**). In this case that is Ms McShane.
>
> 5. The main relevant authorities for the determination of the application are **Stack v**

**Dowden [2007] UKHL 17, Jones v Kernott [2011] UKSC 53** and **Oxley v Hiscock [2005] Fam 211.**

[13] Thus, the question the court has to consider is whether on the evidence it is persuaded that Ms McShane has discharged the onus of proof on her that the respondents' beneficial interest in the property differs from that of the legal title. If the court is so persuaded, the court then must consider what share each respondent is entitled to, having regard to" the whole course of dealing" between them in relation to the property (per Chadwick LJ in **Oxley v Hiscock),** giving broad meaning to "the whole course of dealing" as per Lord Walker and Baroness Hale **Jones v Kernott** paragraph 51(4).

**The Official Receiver's evidence**

[14] The Official Receiver's grounding affidavit was brief. The second affidavit was a rejoinder affidavit and was accompanied by a copy extract of the bankrupt's PEQ narrative and statement of affairs together with a copy of the bankrupt's IVA Proposal and accompanying statement of affairs. As I have stated earlier, in all documents the bankrupt stated that he is the joint owner of 60 Donard Drive.

[15] While I accept that the bankrupt was truthful regarding the factual information he provided in these documents, and I agree that the Official Receiver was correct to attach appropriate weight to that evidence in the first instance, the documents relied on were, in effect, documents prepared by the bankrupt for his own purposes. In the circumstances, I think that they are of comparatively little evidential weight regarding the pertinent issue of the respondents' common intention regarding the impugned 2005 transfer. To consider that particular issue, I can only take into account evidence from the parties themselves.

[16] Following on from that, Mr Dunford argued that this raised a valid issue regarding the evidence in the case; namely, that the Official Receiver did not put Ms McShane's evidence to the bankrupt. That does appear to be the case. At paragraph 2 of his affidavit of 15th March 2013, in reply to Ms McShane's first affidavit in which she sets out her claim that she is entitled to the entire beneficial interest in the property, the Official Receiver states:

> "The second named Respondent seems to imply that the property was put into the joint names of herself and the first named Respondent, not to transfer any beneficial interest in the property to the first named Respondent but rather as a device to allow her to obtain a secured loan against the property. I do not believe that this view was shared by the first named Respondent."

The Official Receiver then proceeded to refer to the formal documents executed by the bankrupt wherein he declares a legal interest in the property. However, what the application was already concerned with at that stage was the question of whether

the presumption of the respondents' legal interest in the property was rebutted by evidence of contrary intention. The above paragraph in the Official Receiver's affidavit, and the final sentence in particular, is therefore of no evidential value. Mr Dunford argued that as the Official Receiver did not put Ms McShane's evidence to the bankrupt, her evidence is uncontradicted and should therefore be subject to the normal principles which apply to uncontradicted evidence. For reasons I will expand upon in due course, I agree. However, it is well established from the authorities that the starting point in this instant issue is the legal title, and the presumption that the parties' beneficial interests in the property follow that title. It is also well established that the onus of proof that the parties' interests are held otherwise rests with the party so contending, and so it is thus largely dependent upon the evidence that party submits to rebut the relevant presumption. It follows therefore that in this case the onus of proof is on Ms McShane and the weight to be given to her evidence, rather than the evidence of the Official Receiver. Thus to a certain extent, but not entirely, the present case turns on the credibility of the evidence given by Ms McShane, to which I now turn.

**Ms McShane's evidence**

[17] In addition to her two affidavits, Mrs McShane also served the Official Receiver with documentary evidence to support her claim that she is entitled to the entire beneficial interest in the property. This took the form of:

- Copy bank statements for the period 2002 to 2012;
- Copy documentary evidence relating to her purchase of the property from NIHE;
- Copy documentation relating to the Santander mortgage in 2005;
- Copy documentary evidence regarding the two further advances from Santander in 2006 and 2007.

[18] Returning to Mr Dunford's point, there is a long established principle that sworn evidence should not be disbelieved unless inherently incredible or not properly challenged. I see no reason to depart from that principle. Ms McShane was cross-examined (quite properly and fairly in my opinion) by Mr Gowdy on both her affidavit evidence and the documentary evidence. Having had the benefit of observing Ms McShane giving that evidence, I have no doubt that her evidence as to the circumstances in which the subject conveyance was entered into by herself and the bankrupt was both honest and reliable. I have no hesitation in accepting that evidence. In the circumstances, and on the basis of Ms McShane's uncontradicted evidence, I will now turn to the facts as I find them.

[19] Ms McShane purchased the subject property from the Northern Ireland Housing Executive (NIHE) in or about 19th October 1999. She was the NIHE tenant at the time as were her parents before her. Indeed Ms McShane's parents took out the NIHE

tenancy for the property in 1950. Ms McShane was born and brought up in the house. She continues to reside there along with her two adult children now aged 29 and 31.

[20] In or about 2002 Ms McShane commenced a relationship with the bankrupt. In 2005 the bankrupt moved into 60 Donard Drive to live with Ms McShane and her two children. Around this time, Ms McShane decided to change her mortgage provider and borrow further funds to carry out home improvements. The chronology of the case shows that this was something that Ms McShane did from time to time. However, although she could afford the mortgage repayments due to her modest lifestyle, Ms McShane's income level was insufficient to borrow the amount she sought. Thus, the property was conveyed into the joint names of herself and the bankrupt to overcome this obstacle.

[21] The Santander documentation, while noting the respondents' respective incomes, expresses no interest in whether they have for example a joint bank account, or share their financial resources. This documentation also shows that the designated account for repayment of the loan facilities (including the two further advances) was Ms McShane's personal bank account. Ms McShane's bank statements for the period 2005 to 2012 show that at all material times the Santander mortgage payments were made solely by Ms McShane. The bankrupt and Ms McShane did not have a joint bank account or share financial resources. The bankrupt made no financial contribution to the mortgage or the household expenses. Indeed, Ms McShane continues to make the repayments on the bankrupt's vehicle even though her relationship with the bankrupt ended in 2012, when the bankrupt moved out of the property.

[22] From the IVA documentation I find that while the bankrupt states that he has an interest in 60 Donard Drive, his references to the property are nonetheless somewhat guarded. First of all, the bankrupt specifically excluded the property from his proposed IVA making it clear that the property would not be sold for the purposes of the IVA. Secondly, in referring to a future re-mortgaging of the property to release equity (some 30 months after approval of any IVA), the bankrupt only refers to using his "best endeavours" to do so. For my part, I do not see how any dealings with the property within the context of the bankrupt's proposed IVA could have taken place without the consent of Ms McShane yet there is no mention of any of this in the IVA Proposal. This, together with Ms McShane's evidence that she knew nothing of the bankrupt's IVA, leads me to conclude that the bankrupt concealed it from her.

[23] For present purposes, the key facts to be distilled from that factual background are:

- The respondents did not purchase the property together;

- No consideration passed between Ms McShane and the bankrupt in the course of the transfer in 2005.

- There was no common intention as at the date of the impugned transfer that the respondents would have a joint beneficial interest in the property;

- The respondents' common intention as at the date of the impugned transfer was to facilitate Ms McShane in raising finance on the property;

- From the outset of the Santander mortgage in 2005, the designated bank account for the repayment of the facility was Ms McShane's personal account;

- From 2005 to date, Ms McShane alone has made the repayments on the mortgage (including the further advances) from her own personal bank account;

- The respondents did not hold a bank account or share financial resources.

**Conclusions**

[24] Applying the relevant legal principles to those facts, I accept Ms McShane's credible and uncontradicted evidence that the reason for the transfer of the property from her sole name to the joint names of herself and the bankrupt in May 2005 was as she described it. I also accept that in the course of this transfer there was no common intention that she and the bankrupt would have a joint beneficial interest in the subject property.

[25] The next question which then arises is whether the bankrupt has <u>any</u> beneficial interest in the property. Having regard to the facts which I have set forth and taking account of "the whole course of dealing" between the respondents, I am satisfied that he did not. First, it is clear that from the date of the transfer and Santander mortgage Ms McShane alone made the mortgage payments from her own personal funds and her own bank account. Secondly, notwithstanding the submission to the contrary, I found no evidence of the respondents having shared financial resources in relation to the property, or any evidence that the bankrupt made any financial contribution to the household at all.

**Disposal of application**

[26] In the circumstances, I am satisfied that Ms McShane has proved her case and rebutted the presumption of a joint beneficial interest. For the reasons given, I find that she has the sole beneficial interest in the property. The relief sought by the Official Receiver is therefore refused.