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

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

ORLA WALLACE AS LIQUIDATOR OF DORNAN'S SERVICE STATION  
(LISBURN) LIMITED  
AND  
DORNAN'S SERVICE STATION (LISBURN) LIMITED, IN LIQUIDATION

Plaintiffs;

-and-

FERGUS DORNAN

Defendant.

**McBRIDE J**

**Application**

[1] The first named plaintiff, as liquidator of Dornan's Service Station (Lisburn) Limited (the second named plaintiff hereinafter called "the company") claims that the company is the legal, equitable and beneficial owner of lands and premises situate and known as 12 Market Place, Lisburn ("the lands"). The defendant defends the claim on the basis that he is the legal, equitable and beneficial owner of the lands on the basis the lands were conveyed to him on foot of a Deed of Conveyance dated 15 June 2006 ("the deed") in consideration of monies paid by him to the company.

[2] The plaintiffs were represented by Mr David Dunlop of counsel. The defendant appeared as a litigant in person.

## **Background**

[3] The company was wound up by Order of the court dated 22 April 2010. The plaintiff was appointed as liquidator on 20 October 2010. The defendant was a director and majority shareholder in the company.

### **“The lands”**

[4] The lands are unregistered and consist of commercial premises situate at 10-12 Market Place, Lisburn. The lands are subject to a lease by the company to Lindsay Cars Limited (“the tenant”) for a term of 25 years commencing in March 2003 at an annual rent of £48,000 per annum. The tenant remains in occupation.

### **“The Deed”**

[5] The deed has a handwritten date which is difficult to decipher but it appears to be dated 6 June 2006. The parties to the conveyance are described as the company and the defendant. The deed was prepared by Green and Malpas, solicitors. The lands to be conveyed are described as 12 Market Place, Lisburn, County Antrim and the consideration is described as follows:

“In consideration of the premises, the vendor has agreed with the purchaser to convey unto the purchaser the premises ...”

The term ‘premises’ is not defined in the deed.

[6] It was certified within the body of the deed that the instrument falls within Category L of the schedule to the Stamp Duty (Exempt Instruments) Regulations 1987. On the face of the document there is a signature purporting to be by the defendant who is described as a director and a signature purporting to be by Tom Keery who is described as a director. The signatures of the defendant and Mr Keery are purportedly witnessed by Mr Green, solicitor in Green and Malpas solicitors.

### **The preliminary issue**

[7] In his opening Mr Dunlop submitted that the deed was not validly executed as it did not comply with the formalities set out in the relevant companies’ legislation. He further submitted that it was “a false document”. In the alternative he submitted that even if the document was valid, the deed was voidable at the election of the company and/or in the alternative it should be set aside on the basis that it was a transaction which defrauded creditors.

[8] The parties agreed that the court should determine as a preliminary issue the question whether the deed was validly executed by the company in accordance with

the requirements for valid execution set out in the companies' legislation. In the event the court found that the deed was not validly executed as it did not comply with the formalities required under the companies' legislation, it was agreed that the court should then determine the appropriate relief to be granted. In the event the court found that the deed was validly executed, the court would then hear submissions as to whether further evidence was required to enable it to determine the other issues in dispute and thereafter the court would determine the outstanding issues in dispute and the relief, if any, which should be granted.

### **The evidence**

[9] Evidence was given by Ms Wallace on behalf of the plaintiff. Mr Dornan gave evidence on his own behalf.

[10] In summarising the evidence I have highlighted those parts which are relevant to the preliminary question to be determined by the court.

### **Evidence of Ms Wallace**

[11] Ms Wallace gave evidence that she was appointed liquidator of the plaintiff company on 20 October 2010. She met the defendant on 25 February 2011 and kept a minute of this meeting which she referred to. The minutes of the meeting recorded that the defendant informed her that he believed he owned the lands. When she put to him that there was no evidence he paid for the lands he did not give her details of the alleged loans he had made to the company. When she asked him how the company debt had arisen he informed her that he was always short of money and just dipped into the company accounts. Due to a lack of books and records being made available to her it was difficult for her to ascertain the true financial picture of the company but it is noted in the minute of the meeting that Mr Dornan informed her the company owed him £450,000 but he did not set out details of how this debt arose.

[12] Ms Wallace confirmed in cross-examination that Mr Dornan never informed her at the meeting that he had paid various company debts and that the payment of these debts was the consideration given by him for the transfer of the lands by the company to him.

[13] She further confirmed that no accounts had been filed for the company since June 2002 until the date of liquidation, save a document which had been filed by the company accountants, PGM dated November 2007 which recorded that the lands were an asset of the company, rather than an asset belonging to the defendant. This document also exhibited a valuation of the lands by Colliers dated June 2007 which valued the lands at £1 Million.

[14] Ms Wallace further confirmed that she had not been provided with a minute book of the company and had been provided with no record of a notice to shareholders regarding a company meeting to approve a sale to a director and had no record that any such meeting of the company had taken place and had no record of a company resolution approving the sale of the lands to the defendant.

[15] From her analysis of the bank records, rental payments for the lands had continued to be paid by the tenant to the company until March 2010. It was only one month after the winding up order had been made that the defendant then sought to have the rent paid into his own personal account.

[16] From her perusal of the company records, Mr Keery was never appointed a director of the company. He had been secretary of the company but had resigned from this position on 9 March 2004. She further provided to the court other company documents which bore the signature of Mr Keery.

[17] She referred to the defendant's bankruptcy questionnaire dated 17 May 2010 and confirmed that the defendant failed to record that he owned the lands in section 8 which asked him to give details of his "current property".

[18] Ms Wallace stated that from her perusal of the records available to her, the Bank of Scotland held security over the lands, which was discharged on 2 February 2007. This coincided with the date a Bank of Ireland debenture which was created on 1 February 2007.

[19] I find that Ms Wallace gave her evidence in a professional and dispassionate manner. She supported her evidence by reference to the available documentation including the minutes of her meeting with the defendant. I have no reason to doubt the accuracy of the factual evidence given by Ms Wallace to the court.

### **Mr Dornan's evidence**

[20] Mr Dornan gave evidence on his own behalf. The defendant had prepared a document entitled "Reconstructed Director's current account based on Fergus Dornan's recollection of events at 20 April 2012" hereinafter referred to as the "reconstructed account". In the reconstructed account he set out details of monies he had paid to the company between 2003-2007, totalling £1,315,000 as 'credits'. He then detailed as a 'debit' sale of the lands to him in 2006, at £700,000.

[21] The reconstructed account set out details of 7 alleged transactions. First, it stated the defendant cleared the company's overdraft of £175,000 with Ulster Bank in 2003. When he gave evidence, the defendant stated he made a payment of £170,000. As proof he personally paid these monies to the company he referred the court to a facility letter by the Ulster Bank dated 23 February 2004. This letter set out various loans the bank was prepared to advance to the defendant. Under the title 'Purpose'

the letter stated, "Clear in full overdraft of Dornan's Service Station (Lisburn) Limited - circa £130,000- repay mortgage on private residence circa £110,000 - with the residual to Limited Company to provide working capital." Mr Dornan stated that he used approximately £40,000 to pay wages thereby giving a total payment of £170,000. Secondly the reconstructed account stated the defendant in 2003 paid a debt of £175,000 the company owed to Capital PSA Finance. When giving evidence he accepted he had no documentary evidence to prove he paid this debt. He stated he used rental monies paid to him by Roadside Motors in respect of its tenancy of 22 Market Place, Lisburn, to discharge the debt. Thirdly, the reconstructed account stated that his sister Michelle Dornan introduced £110,000 into the company between 2000 and 2003 which the defendant repaid to her personally. When he gave evidence, the defendant stated that he had paid his sister a total figure of £175,000 which he financed by way of borrowings and by encashment of a bond he had received from his mother. He produced no evidence, save documents he had created, which proved either that his sister had introduced any monies into the company or that he had repaid such monies to her. There was some evidence showing the encashment of a bond totalling £42,000 payable to the defendant and his sister but this was not evidence which proved she introduced monies to the company or that he such repaid such monies to her. Fourthly, the reconstructed account set out that the defendant paid a "Company debt to Fiat Finance for £50,000...-personal guarantee." When he gave evidence he stated that this debt was paid by his sister and he repaid her. Fifthly, the reconstructed account stated, "2005 - Sale of 17-19 Larne Road £1M split. 17 Larne Road (Fergus Dornan) £700,000. 19 Larne Road (Company) £300,000. £290,000 of the proceeds were used for personal purposes...The remainder was retained by the Company." In his evidence he stated that he used £410,000 of the proceeds of sale of 17 Larne Road to repay various company debts, including the debt owed by the company to Bank of Scotland. Sixthly, the document records the sale of the lands by the company to the defendant in 2006 for £700,000. In his evidence he stated that the figure of £700,000 represented his own valuation of the lands at the time of transfer. Seventhly, the reconstructed account stated that in 2007 the defendant re-mortgaged Beersbridge Road and used £400,000 of borrowings of £1.4Million to clear the company's Bank of Scotland debts. The "Declaration of Satisfaction of Bank of Scotland debt" signed by the defendant is dated 1 February two thousand and seven. The word "SEVEN" in the date is then deleted and "SIX" is inserted.

[22] Mr Dornan stated that Green and Malpas, Solicitors who acted as his solicitors drafted the deed. On 6 June 2006 he met Tom Keery and went with him to the solicitor's offices. Mr Keery was appointed director that morning and Mr Green, solicitor acted as company secretary. A company meeting was convened in the solicitor's offices and the sale of the lands to the defendant was approved by the company. Mr Green then completed the necessary paperwork and informed Mr Dornan that the lands were transferred into his name and he now owned the lands. Mr Dornan stated that the consideration for the lands was £700,000 which he

had already provided through payment of the various debts set out in the reconstructed account.

[23] Mr Dornan gave evidence that in his bankruptcy questionnaire he had listed the lands as part of his current property although he referred to the lands as 14 Market Place, Lisburn. He further stated that there was documentation in which he was referred to as the owner of the lands, namely Colliers' valuation dated June 2007 in which he was described as the landlord of the lands and his accountants' development plan dated May 2007, which was designed to obtain security from the bank, in which the lands were described as one of his personal assets.

[24] Under cross-examination Mr Dornan accepted that neither Mr Keery nor Mr Green would be attending court as witnesses to prove that they had signed the deed. He accepted he had approached Mr Keery before the court hearing to sign an affidavit of evidence but confirmed that Mr Keery had refused to do so and informed the defendant that the signature on the document did not look like his. The defendant also accepted, when shown other samples of Mr Keery's signature that the signature on the deed purporting to be by Mr Keery "bore no resemblance" to his other signatures. Mr Dornan stated however that he recalled witnessing Mr Keery signing the deed. He further stated that he did not ask Mr Green to attend court as a witness as he had proceedings against Mr Green and had made a complaint against him to the police. He also understood that Mr Green was now struck off as a solicitor for malpractice.

[25] Mr Dornan accepted under cross examination that he had not kept company accounts since June 2002 and that he was presently disqualified as a director for a period of 9 years because of his conduct regarding the company. He accepted that he had no records to show that Mr Keery was ever appointed a director. He stated that he believed the solicitor had carried out the necessary paperwork to appoint Mr Keery as a director and he trusted his solicitor. He also accepted he had no records to prove notice of a meeting of shareholders had been given but he stated he believed the solicitor had again done the necessary paperwork to give such notice and it was his view that a meeting had been properly convened and the company had passed a resolution to approve the sale of the lands to him. He accepted that no record of such a meeting or resolution by the company had been produced to the court.

[26] In respect of the premises at Larne Road it was put to Mr Dornan that the Memorandum of Sale and the Transfer of the lands, both of which were signed by him, described the vendor of the lands as the company. The defendant stated that he owned 17 Larne Road, Ballymena and the company owned 19 Larne Road, Ballymena as he had previously purchased 17 Larne Road from the company. In proof of the purchase of 17 Larne Road he referred the court to a resolution of the company dated 12 December 2003 which had approved the sale of 17 Larne Road, Ballymena, to him and he also referred the court to letters from Ulster bank dated

3 December 2004 and 23 February 2004 which provided certain facilities to him for inter alia the purpose of acquiring property at Larne Road costing £240,000. The defendant did not produce any record to the court of a contract of sale of 17 Larne Road to him.

[27] When questioned about the PGM accountant's statement prepared in November 2007 which listed the lands as an asset of the company the defendant said they made a mistake and he had sent e-mails to them to confirm that the lands were in fact held as security by HSBC for his personal debts. He further denied that the Bank of Ireland held any security over the lands.

[28] In the past Mr Dornan was a very successful business man. When difficulties in his business arose he was placed under significant emotional and financial pressure. He found it difficult to cope and "buried his head in the sand" resulting in him failing to attend to the daily management of his financial affairs. He failed to prepare company accounts and failed to produce books and records when asked to do so by the liquidator until compelled to do so under threat of court proceedings, and then only produced limited records and books. Having observed Mr Dornan in the witness box I am satisfied that he was not deliberately dishonest in the evidence he gave to the court. He was emotional at times and presented as someone under severe stress. Given his personal involvement in the matters in dispute and given the financial pressures he was under, however I find that very little weight can be attached to the accuracy of the assertions made by him in the reconstructed account because:

- it was compiled long after the events it recorded, by someone who is not independent and who did not have access to any contemporaneous notes and records;
- the assertions made in the document are not supported by any corroborating documentation, which could easily have been obtained by the defendant if such documents existed;
- the defendant's evidence to the court differed in a number of material respects from the assertions made in the reconstructed account particularly in respect of the actual amount of monies loaned to the company and the purpose for which the monies were advanced. For example there was double accounting in respect of repayment of the Bank of Scotland debt as he said in evidence he used the proceeds of sale of Larne Road to clear this debt in 2005 whereas the reconstructed account states this debt was cleared in 2007 from funds obtained by a mortgage of other premises he owned; and
- for reasons which I will set out in my findings of fact, many of the assertions made in the reconstructed account do not stand up to scrutiny when one looks at the documents which are available.

In respect of the evidence about the creation of the deed and the alleged appointment of Mr Keery as Director I find that the defendant was mistaken in his

recollection of events. I accept that he placed trust and confidence in his solicitor and believed that he had taken all necessary legal steps to comply with the companies' legislation and he further believed that his solicitor had transferred the lands into his name.

### **Findings of Fact**

[29] On the basis of my assessment of the evidence, both oral and documentary I make a number of findings of fact.

[30] First, I find that the deed was not signed by Mr Keery. Having viewed the various signatures by Mr Keery on other company records I am satisfied that there are considerable differences between the signature on the deed and the other signatures. The defendant accepted that the signature on the deed bore no resemblance to Mr Keery's other signatures and he further gave evidence that Mr Keery would not sign an affidavit or come to court to say that he had in fact witnessed the deed. Mr Keery, according to the defendant, told the defendant that the signature on the document "did not look like his". The defendant in his role as director of the company attended many meetings at his solicitor's offices in respect of a number of transactions which required him to sign documents. I find that the defendant was mistaken when he said he recalled Mr Keery being present and witnessing the deed.

[31] I further find as a fact that Mr Keery was never a director of the company and therefore was not a director at the time the deed was purportedly signed by him. There is no record of Mr Keery ever being appointed a director and there is no other evidence to show that he was a director at the relevant time. Although, Mr Dornan gave evidence that he believed his solicitor had appointed Mr Keery a director I am satisfied that his solicitors had not done so, notwithstanding what Mr Green may have told Mr Dornan.

[32] I find that the defendant did not give valuable consideration for the transfer of the lands because:

- (a) he did not advance monies as alleged,
- (b) any monies advanced were not advanced on the basis they formed consideration for the purchase of the lands; and
- (c) the deed declares on its fact that no valuable consideration was given for the purchase of the lands.

[33] The lands were valued by Colliers in 2007 at £1M. The Defendant valued the lands at £700,000 as of the date of the deed. The Court did not have the benefit of any expert evidence as to the value of the lands as of the date of the deed. To avoid



the risk of any prejudice to the defendant the Court proceeds on the basis that the value of the lands at the date of the deed was £700,000.

[34] I find, on the balance of probabilities that the defendant advanced £170,000 to the company in or around 2003 as there are documents which tend to show such monies being advanced. I am also satisfied, however, that between 2003 and the date the company went into liquidation, the Defendant extracted significant sums of money from the company. Given the extent of the debt of the company I find, on the balance of probabilities that the sums extracted by Mr Dornan exceeded the figure of £170,000 he paid to the company in 2003. I make this finding on the basis of the evidence of Ms Wallace who stated Mr Dornan when asked by her, how the company debt had arisen, responded by saying, he was always short of cash and just “dipped in” to the company accounts.

[35] I further find on the balance of probabilities that the defendant did not advance any of the other sums set out in the reconstructed account. This finding is based on the reasons set out at paragraph 28 and on the basis he failed to produce to the court any documentary proofs in support of the alleged advances despite the fact he had every opportunity to produce such documentation. The assertion that he advanced money to the company in 2007 post-dates the date of the deed and cannot be consideration for the transfer of the lands.

[36] I further find that he did not own 17 Larne Road, Ballymena and therefore could not have advanced the proceeds of sale of these lands to the company. I find that although steps may have been taken by the defendant to purchase 17 Larne Road, Ballymena there is no evidence to show that he actually purchased these lands and all the available evidence including the Memorandum of Sale and Land Registry Form 9, (when compared with the description of the lands by reference to land folios and land registry maps) show that the lands were owned by the company and the company was the vendor of the lands in 2005. It is fair to say that the Memorandum of Sale and Land Registry Form 9 relating to the sale of 17-19 Larne Road, Ballymena, were not as straightforward as suggested by counsel for the Plaintiff. For this reason I intend to set out why I have made the finding that the lands were owned by the company and not by the defendant. Land Registry Form 9 which was put to Mr Dornan describes the postal address of the lands as 125-127 Larne Road, Ballymena. It then goes on to describe the registered owner and vendor of the lands in affected folios of 24651 and 24850 County Antrim as the Company. The sale price is £1M and the transferee is Colin Kelly and others. Land Registry Form 9 is then signed by Mr Dornan. The Memorandum of Sale put to Mr Dornan refers to the “property in sale” as property situate at 125-127 Larne Road, Ballymena and states, “the title to the property shall commence with: Land Certificate folio numbers 24651 and 24850 County Antrim”. The sale price is £1M and the vendor is described as the company. The Memorandum is signed by Mr Dornan and dated 14/12/05. Land Certificate for folio 24615 County Antrim shows transfer of ownership of the lands to the company in consideration of £230,000 which said transfer which was registered

in January 2001. The Land Certificate for this folio does not record details of any subsequent dealings with the land. Land Certificate for Folio 24850 County Antrim shows that the lands in this folio were transferred to the company in consideration of £230,000 and this transfer was registered on 18 January 2000. It then shows a subsequent transfer of the lands to Colin Kelly and others by a transfer which was registered on 13 April 2006. The consideration was described as £1M for "this and other lands". I note that there is a difference between the postal addresses in respect of the Larne Road properties and there is a difference in the description of one of the folios in that the Land Certificate relates to Folio 24615 whereas the Memorandum of Sale and Land Transfer both refer to Folio 24651. I am satisfied on the basis of all the documents provided to the court including the Land Registry map that there is a typographical error in the Memorandum of Sale and Land Registry Form 9 and that the lands referred to are the lands contained in Folios 24615 and not Folio 24651. I make this finding on the basis that the record of dealings set out in Land Certificates 24615 and 24850 County Antrim accord with the details of consideration, identity of parties etc., set out in the various Memorandum of Sale and Land Registry Form 9 provided to the court. Further I am satisfied that the lands contained in these folios were originally known as 17 -19 Larne Road and the postal address changed to 125-127 Larne Road and that they are 'one and the same' lands. The Memorandum of Sale relating to the original sale of Folio 24615 County Antrim to the Company describes the postal address as 17 Larne Road and the Land Registry map shows that Folio 24615 is immediately adjacent to Folio 24850. I find therefore that the postal address for folio 24850 was originally 19 Larne Road, Ballymena. Thereafter, the postal address for 17-19 Larne Road, Ballymena changed to 125-127 Larne Road, Ballymena and for this reason the lands now described as 125-127 Larne Road in the Memorandum of Sale and Land Registry Form 9 are the lands contained in folios 24615 and 24850 County Antrim and which were originally given the postal addresses of 17 and 19 Larne Road, Ballymena. I further note from my perusal of the Land Certificates that at no stage were the lands in folios 24615 and 24850 ever registered in the name of the defendant. In addition the defendant was unable to produce any Memorandum of Sale, Land Registry Form 9 or other agreement showing that the lands were sold to him by the company. I accept that Mr Dornan may have been lead to believe by Mr Green that the lands at 17 Larne Road were transferred to him and indeed some preparatory work was done in terms of obtaining a resolution of the company to approve such a sale. In addition there is evidence that Mr Dornan obtained finance for the purpose of purchasing these lands. For whatever reason however the lands were never transferred into his name and therefore remained the property of the company.

[37] If I am wrong about my finding that Mr Dornan did not advance monies to the company and in fact he did advance sums in excess of £700,000 I find that these monies were not advanced as consideration for the sale of the lands. The monies were advanced long before the lands were sold to him and at a time when sale of the lands was not contemplated. Further, when Ms Wallace at the meeting with the defendant put to him that he had no evidence he paid for the lands he failed to

inform her that he had paid for the lands as a result of paying monies to the company since 2003. I am satisfied that if this had been the consideration for the transfer of the lands he would have made this case when he met Ms Wallace especially when she gave him an opportunity to do so.

[38] I am further satisfied that the deed makes clear on its face that no consideration was provided. It states that the instrument falls within category L of the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

Regulation 2 provides as follows:

“An instrument which -

- (a) is executed on or after 1<sup>st</sup> May 1987,
- (b) is of a kind specified in the Schedule hereto for the purposes of this regulation, and
- (c) is certified by a certificate which fulfils the conditions of regulation 3 to be an instrument of that kind

shall be exempt from duty ...”

Regulation 3 provides,

“The certificate -

- (a) shall be in writing and -
  - (i) be included as part of the instrument, ...
- (b) shall contain a sufficient description of -
  - (i) ...
  - (ii) The category in the schedule hereto into which the instrument falls;
- (c) (i) shall be signed by the transferor or grantor or by his solicitor or duly authorised agent,...

The Schedule provides:

“An instrument which effects any one or more of the following transactions only is an instrument specified for the purposes of regulation 2-

...

L. The conveyance or transfer of property operating as a voluntary disposition inter vivos for no consideration in money or money's worth nor any consideration referred to in Section 57 of the Stamp Act 1891(conveyance in consideration of a debt etc.,)"

I am satisfied that the transfer of the lands was a voluntary transfer and therefore no stamp duty was payable. Mr Dornan signed this document and I am satisfied that as a business man with much experience in dealings in land he well understood the declaration in the deed that the transfer did not attract stamp duty because no consideration had been given for the transfer.

[39] I make a number of further findings which are not necessary to the determination of the preliminary question but which I think are appropriate to put on the record in the event the matter proceeds further. I find that there was no record of any notice of meeting to shareholders and I am satisfied that no such notice was sent. I also find that there was no resolution passed by the company to sell the land to the defendant as there is no record of any such meeting and no other evidence was given that such a meeting was ever held or any such resolution passed.

[40] I find that after the deed was executed a number of documents were created and in some of these the lands are listed as an asset of the company and in other documents the lands are listed as an asset of the defendant. I find that these documents therefore do not assist the court one way or the other in determining ownership of the lands.

[41] I find as a fact that the rent continued to be paid by the tenant to the company until March 2010 as evidenced by the bank's statements together with the defendant's admission that he never sought to change this arrangement.

[42] I accept Mr Dornan's evidence that he believed, because his solicitor told him so, that all the necessary paperwork was in order and that the lands had been transferred to him. I accept further that Mr Dornan placed trust and confidence in his solicitor. I am satisfied from the evidence that Mr Dornan was not well served by his solicitor and the necessary steps were not taken to validly transfer the lands from the company to the defendant and Mr Dornan has now made a complaint about his former solicitor to the police. The court is not privy to the nature of the complaint but it may involve consideration regarding the satisfaction of the Bank of Scotland debt and the creation of the Bank of Ireland debenture. This court heard some evidence in respect of these matters but given that it was not central to the matter in dispute and given that the matter may be more fully explored in another forum this Court makes no findings in respect of the question whether there was any fraudulent conduct in respect of these loans. The question whether the Bank of

Ireland holds security over the lands is not one for this court to determine save that the answer to that question may depend on whether the lands are owned by the defendant or the company.

### **Plaintiff's submissions**

[43] The plaintiff submitted that the deed was not validly executed as it did not comply with the requirements for valid execution of documents by a company set out in Article 46A of the Companies (Northern Ireland) Order 1986 ("the 1986 Order") which was inserted by Article 55 of the Companies (No 2) (Northern Ireland) Order 1990, in that the deed was neither, (a) sealed with the company seal, nor (b) signed by either a director and secretary of the company or by two directors of the company. In support of this submission counsel submitted as follows:

- (i) The deed was not signed by Mr Tom Keery and further even if it was signed by him he was not a director of the company at the relevant time.
- (ii) The defendant could not avail of the saving provisions set out in Article 46A(6) as the defendant was not a purchaser acting in good faith who provided valuable consideration.

Counsel further submitted that even if the deed was validly executed:

- (i) it was voidable at the election of the company as the transfer was a substantial property transaction involving a director and the procedures to permit such transaction set out in Article 328 were not followed, in that there was no resolution by the company to sell the land to the defendant; and
- (ii) The deed was a "false" document as:
  - There was no resolution by the company to transfer the land to the defendant.
  - No shareholder approval was sought to conduct the transaction.
  - The deal was never registered.
  - No consideration passed to the defendant and no stamp duty was paid.
  - Company accounts prepared more than 12 months after the date of the deed show that the lands were an asset of the company.
  - Rental payments after the date of the deed continued to be paid to the company and not the defendant.

- In a statutory questionnaire in respect of his own bankruptcy dated 17 May 2010 the defendant did not list the lands as one of his assets.
  - In January 2007 the Bank of Ireland issued a facility letter to the company at £1.4m secured inter alia on the lands and on 1 February 2007 the defendant executed a debenture on behalf of the company which was then registered as a charge over the lands.
- (iii) The deed should be set aside as it was a transaction defrauding creditors.

[44] The plaintiff therefore sought declaratory relief that the lands vested in the plaintiff in fee simple and the purported deed dated 6 June 2006 was null and void and of no cause or effect.

### **The defendant's submissions**

[45] The defendant submitted that the lands were transferred to him by way of the deed which complied with the necessary legal requirements. Further, in the event it did not comply with the requirements set out in the company's legislation he was a person who acted in good faith and who gave valuable consideration for the lands and therefore Article 46A(6) applied. He further submitted that the deed was not voidable as there had been a company meeting which passed a resolution to sell the lands to him. He further denied that the deed was fraudulent or false in any way or was a transaction to defraud creditors.

### **Relevant legal provisions**

[46] Article 46A of the 1986 Order provides:

“(1) The following provisions have effect with respect to the execution of documents by a company.

(2) A document is executed by a company by the affixing of its common seal.

....

(4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

...

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A 'purchaser' means a purchaser in good faith for valuable consideration'..."

[47] Article 328 of the 1986 Order sets out provisions in respect of substantial property transactions involving directors and provides as follows:

"(1) With the exceptions provided by Article 329, a company shall not enter into an arrangement –

(a) Whereby a director of the company ... acquires ... one or more non-cash assets of the requisite value from the company ... unless the arrangement is first approved by a resolution of the company in general meeting ...

(2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than £1,000 but exceeds £50,000...."

[48] Article 330 provides:

"(1) An arrangement entered into by a company in contravention of Article 328, and any transaction entered into in pursuance of the arrangement is voidable at the instance of the company unless one or more of the conditions specified in paragraph (2) is satisfied.

(2) Those conditions are that –

(a) Restitution of any money or other asset ... is no longer possible.

(b) Any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the

arrangement or transaction would be affected by its avoidance; or

- (c) The arrangement is, within a reasonable period, affirmed by the company in general meeting..."

[49] Section 367 of the Insolvency (Northern Ireland) Order 1989 sets out provisions relating to transactions defrauding creditors.

### **Conclusions**

[50] The preliminary question is whether the deed was validly executed. In accordance with Article 46A of the Companies (No. 2) (Northern Ireland) Order 1990 a deed is only validly executed by a company if it is affixed with the company's common seal or alternatively is signed either by (a) a director and secretary of the company or (b) by two directors of the company.

[51] I have found that the deed was not signed by Mr Keery. Therefore, it did not comply with the requirements set out in Article 46A. If I am wrong about that and the deed was signed by Mr Keery I have also found that he was not a director of the company at the relevant time. Again therefore the deed was not executed in accordance with the requirements of the 1986 Order.

[52] Under Article 46A(6) a document is deemed to have been duly executed by a company if it purports to be signed by a director and secretary of the company or by two directors and the purchaser is someone acting in good faith for valuable consideration. I have found that the defendant did not pay valuable consideration for the lands and therefore Article 46A(6) is not applicable.

[53] I therefore find that the deed was not executed in accordance with the requirements set out in the 1986 Order and therefore the answer to the preliminary question is that the deed was not validly executed.

[54] Given my determination of the preliminary question it is unnecessary for me to determine the other issues in dispute.

### **Relief**

[55] Although the Writ of Summons set out various grounds of relief counsel for the Plaintiff indicated to the Court that he sought only the following relief:

- (a) A declaration that the lands vested in the plaintiff in fee simple, and



(b) A declaration that the purported deed dated 6 June 2006 is null and void and of no cause or effect.

[56] Given my findings of fact, conclusions and determination of the preliminary question, I grant the declarations sought by the Plaintiff in the terms set out in paragraph [55] above.

[57] I will hear the parties in respect of costs.