

Neutral Citation No.: [2009] NICC 10

Ref: **HAR7369**

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

Delivered: **13/2/2009**

IN THE CROWN COURT IN NORTHERN IRELAND

**DOWNPATRICK CROWN COURT
(SITTING AT BELFAST)**

THE QUEEN

-v-

GEORGE IGNATIUS MARTIN and MARY MARTIN

HART J

[1] The defendants are husband and wife and have pleaded guilty to four counts under the Forgery and Counterfeiting Act 1981, one of forgery contrary to s. 1, and one of using a forged instrument contrary to s. 3, both in respect of a document dated 17 December 1997; and two further similar counts in respect of a document dated 25 January 2000.

[2] The circumstances giving rise to these charges are that Annie Martin, who is a widow aged 93, and her son the first defendant George Ignatius Martin lived in the family house at 54 Downpatrick Street, Saintfield for many years. This was originally a Housing Executive property and was purchased after Annie Martin's husband died in 1986. She was the tenant and it was purchased in the joint names of herself and the first defendant with a mortgage from a building society.

[3] In 1992 George Ignatius Martin married Mary Martin and after their marriage they and their children lived in 54 Downpatrick Street, sharing their home with Annie Martin.

[4] The charges to which George and Mary Martin have pleaded guilty relate to the forgery of signatures upon two documents which were prepared to carry out a transfer of Annie Martin's share in 54 Downpatrick Street to Mary Martin.

[5] This was carried out in two stages, the first being that a Land Registry Transfer dated 17 December 1997 was drawn up which had the effect of joining Mary Martin as a joint owner of the property with her husband and Annie Martin. This is the subject of counts one and two. The second stage was that on 25 January 2000 a further Land Registry Transfer was drawn up which had the effect of making George and Mary Martin the sole owners of 54 Downpatrick Street, thereby depriving Annie Martin of her remaining interest in that property. This gives rise to counts four and five.

[6] By their pleas the defendants have admitted that they forged the signature of Annie Martin to these documents. This came to light after Annie Martin was admitted to hospital in April 2006. In his statement of additional evidence another son, Malachy, describes how his wife called and found her mother in law very ill, and as a result she was admitted to hospital, although the exact date does not appear in the committal papers. Malachy Martin described in his statement that sometime in mid May 2006 after a nurse said to him and George Ignatius Martin that their mother was well enough to be discharged the first defendant shortly afterwards said that she 'won't be coming back to Saintfield, she will have to go into a nursing home'. When asked why, the first defendant allegedly said that 'she was becoming too much bother', and that they owned all of the house now. Later that night Malachy Martin says that he rang his brother and asked him what was happening, and was told 'look Malachy, she's not getting back in, she's too old, she's had her day and she's now too much trouble and we don't have enough room in the house'. When the second defendant came onto the phone she said much the same.

[7] Following the refusal of the defendants to allow Annie Martin to return to 54 Downpatrick Street she had to remain in hospital for several weeks whilst alternative accommodation was found for her, and eventually a place was found in a nursing home in Belfast, where she continues to reside, and her son Malachy contributes towards the cost.

[8] Malachy Martin was unaware that his mother no longer had any share in the house, and after some enquiries the matter was reported to the police and as the result of complaints made by Annie Martin was investigated. It was discovered that her signature had been forged to the documents to which I have referred. In her police statement Annie Martin maintains that she never agreed to any such transaction.

[9] The present defendants were originally jointly charged with Ann Ervine, the solicitor who prepared the transfers, but the prosecution did not proceed with the charges against Ann Ervine at the trial and the charges against her were ordered to lie on the file. Mr Charles McKay QC (who appears on behalf of the prosecution with Mr David Russell) accepts that evidence produced to the prosecution by Ann Ervine on the morning of the

trial indicated that there were numerous occasions upon which she contacted Annie Martin in respect of instructions from Annie Martin to transfer her interest in the property to Mary Martin. This evidence took the form of a book recording phone contact with her, and the entries suggested that Annie Martin, contrary to what she later alleged to the police, was aware at that time that the procedures to transfer her interest in the house were taking place. Mr McKay QC said that as this book was only produced on the morning of the trial the prosecution were not able to have it forensically examined, but the entries supported Ann Ervine's account and on visual examination of the entries there was nothing to cast doubt on their authenticity. When asked by the court he accepted that there was possibly an argument that there had in fact been agreement by Annie Martin to her interest being transferred, and that the arrangement was then improperly carried out, and I propose to sentence the defendants upon this basis. Had this not been the case, the sentence would have been greater.

[10] It may be that part of the impetus for the defendants behaviour was due to a concern by the defendants that if Annie Martin was no longer able to live in her own home due to ill health and advancing years, and had to be admitted to a nursing home, the cost of nursing home fees might be recouped from her interest in the property, and this might require their home to be sold. In the pre-sentence report on George Ignatius Martin it is recorded that he acted to prevent losing his home; but the report on Mary Martin says that she asserted that "she wanted this to happen so that the house would be secure for her family in the event of her husband's death", a somewhat different motive.

[11] However, Mr McKay QC drew attention to evidence which shows that the defendants' action in not allowing Annie Martin to return home when she was fit to leave the hospital was due to financial motives. Mortgage records in the committal papers reveal that a mortgage of £36,400 was taken out on the property in February 2003, which was of course after the second forgeries resulted in Annie Martin's interest being extinguished. It seems that some or all of this may have been to pay for home improvements and an extension from which Annie Martin may have received some benefit like the other occupants of the house. However, in June 2006 the property was re-mortgaged and a further advance of £44,450 was paid to the defendants on 28 June 2006, of which £18,852 was immediately transferred elsewhere. This still left a balance of £24,854.60 which had been reduced to £11,587.45 by 8 August, see p. 157. When I asked Mr Weir QC (who appears for Mary Martin with Mr Bacon) where the money had gone he replied that there were credit card debts of approximately £15,000 and some furniture and beds were bought for the children, and money was also spent on decoration and wooden floors.

[12] Whilst there may be some evidence to suggest that at some time Annie Martin was a willing party to a change in the ownership of the property, the

defendants have pleaded guilty to forging her signatures. Not only that, but the re-mortgaging of the house and obtaining such a substantial additional advance so soon after refusing to allow her to return to what had been her home for so many years is not only unedifying as Mr Weir QC accepted, but suggests that their motive throughout was greed and that they were determined to achieve improperly what might otherwise happen voluntarily, or by operation of law because, as defence counsel pointed out, as joint owner George Ignatius Martin would succeed to his mother's interest on her death.

[13] The actions of Mary Martin in holding her mother in law's hand in an attempt to help her to sign, and then ultimately signing in her mother in law's name, suggest that even if the initiative for this came from her husband, she played as active a part, and may well have been the moving spirit.

[14] There are a number of mitigating factors. First of all, both defendants are entitled to credit for their pleas of guilty, albeit that that credit must be reduced because the pleas of guilty were not entered until the morning of the trial, thereby requiring Annie Martin to contemplate having to be brought to court. Secondly, as already stated, there is material available to the prosecution which suggests that Annie Martin did give instructions at some stage that her interest in 54 Downpatrick Street be transferred to the defendant Mary Martin. Thirdly, both defendants were persons of not merely good, but irreproachable, previous character as may be seen from the various testimonials handed into court on their behalf.

[15] Mr Ramsay QC on behalf of George Ignatius Martin, submitted that his client had otherwise been a dutiful and supportive son to his mother despite her failing health, and his instructions were that the initiative did come from her. As did Mr Weir QC he referred to the effect a custodial sentence would have on their young children, and he confirmed that his client will not oppose the rectification proceedings that have been launched.

[16] Mr Weir QC for Mary Martin said that his client was motivated by a misguided desire to achieve more security, but this does not sit well with the substantial amount involved in the re-mortgage in June 2006 after the defendants refused to allow Annie Martin to return home.

[17] Finally, there is the fact that if either or both of the defendants goes to prison this will have an effect upon the children of the family, both of whom are at primary school. Medical evidence in relation to the younger child confirms that he has mild autism, although he remains in mainstream education. I accept that any disturbance in his routine would be detrimental to him. The other is due to leave primary education this year. Both Mr Ramsay QC and Mr Weir QC urged me to treat this as an exceptional factor and to show mercy to the children by not sending their parents to prison, pointing to the burden that would fall on their elderly maternal grandparents who would

have to assume sole responsibility for them. They currently look after the children after school until they can be collected.

[18] Forgery of documents is always a very serious matter. As Ognall J pointed out in R v. Lincoln (1994) 15 Cr. App. R. (S.) 333 -

“However exceptional the circumstances forgery - particularly forgery of documents of this character, affecting title to property, must in our view, in all but the most exceptional circumstances, be visited by a sentence of immediate custody.”

In that case the court reduced a sentence of imprisonment from twelve months' to six months. Lincoln has since been referred to with approval by the Court of Appeal (Criminal Division) in R v. Kidd and Bianchy [2008] 1 Cr. App. R. (S.) where sentences of twelve months' imprisonment on pleas of guilty were upheld. Mr Weir QC argued that in the present case the title would not have been affected, but that is not a significant factor. The chief mischief in this case was to take Annie Martin's home away from her in her declining years, and inflict upon her the deep distress at being excluded from her home and contact with her grandchildren that is clear from her victim impact statement. Even on the basis that Annie Martin may have agreed to, or even initiated, the suggestion that the property be put in the sole names of the defendants, I do not believe that she ever contemplated that they would exclude her from her home. The defendants forged her signatures to get this house into their names and took advantage of her absence in hospital to refuse to allow her back and then took advantage of their sole ownership to get a large amount of money. I do not regard the impact that their being imprisoned will have on their children as being an exceptional factor in those circumstances.

[19] I am satisfied that this is a case where immediate custodial sentences are required. I see no reason to distinguish between the defendants and I consider that the least sentence I can impose is one of six months' imprisonment on each count, the sentences will run concurrently.