

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**CHANCERY DIVISION**

**BETWEEN:**

**DAWN ROUSE**

**Plaintiff:**

**-and-**

**BERNARD ROUSE**

**Defendant.**

**HORNER J**

[1] The plaintiff seeks an order that the defendant holds property at 16 Waterside Street, Strabane, County Tyrone (“the property”) on trust for her and she also seeks an order that he transfer legal ownership of the property to her. The defendant who is 85 years and is unable to attend court has had to give his evidence by affidavit because of health issues in order to defend the plaintiff’s claim. Mr Smyth BL appears for the plaintiff. Mr Eamon Foster BL for the defendant. The court is indebted to them for their assistance.

[2] The background facts are rather sad. The defendant and his wife have nine children. They separated when the plaintiff was three years old. She is now 38 years old and has two children of her own. The defendant had only contact with the plaintiff’s sibling, Damien, when his children were growing up. He wanted to have no contact with his wife or any of his other offspring. When Damien died some years ago, this acted as a catalyst for the events which are the subject matter of these proceedings.

[3] The defendant lived at the property which was let by the Northern Ireland Housing Executive. After the demise of her brother, Damien, the plaintiff wrote to the defendant about his death. Subsequently a meeting took place in 2003/2004

between the plaintiff and the defendant. It was subsequently agreed between the plaintiff and the defendant that the plaintiff would help the defendant purchase the property from the NIHE at a discounted price. The defendant was entitled to a discount because he had been a long term tenant of the NIHE; see paragraph 6.3 of the Sale to Tenants' Scheme (as permitted by Article 3(6) of the Housing Rights (NI) Order 1983. A mortgage was to be taken out to finance the purchase but the plaintiff was to be responsible for all mortgage repayments. The defendant had the right to reside in the property until his death.

[4] Following the meeting the plaintiff arranged for financial advice to be obtained from Colm Coyle, letting agent. John Fahy and Son, the defendant's solicitors were asked to draw up a Deed of Declaration of Trust which they did. In doing so they acted for the plaintiff and the defendant.

[5] The plaintiff is a receptionist with the local District Council. At the relevant time she was an administrator with the NIHE. She left this job in 2014. The defendant is an unemployed joiner who has not worked for many years because of health problems. He is of a misanthropic disposition the court was told and avoids for the most part the company of others. As I said in the past he has had no desire for contact with almost all his immediate family.

[6] Anthony McGarrigle of John Fahy and Son was the solicitor who acted for both parties. It is significant that he continues to act for the defendant and he does so in these proceedings. The defendant is or seems content with the advice and representation he has received to date. Otherwise he would no doubt have retained other solicitors to defend his interests. In any event he prepared the Declaration of Trust which both parties executed on 29 June 2004.

[7] The mortgage which was taken out was for £20,000. The purchase price was £18,450. The balance was used to discharge the costs of the solicitors and other miscellaneous expenses including a new kitchen and carpets for the property. The plaintiff set up a direct debt to discharge the mortgage repayments. As an interim measure she moved into the house with the defendant who was awaiting a hip operation. The conveyance to the defendant was in June 2004 and the plaintiff moved into the property in September 2004. In addition to paying the monthly instalments on the mortgage, the plaintiff also paid for house insurance. It was anticipated that after three years the defendant would then transfer the property into the plaintiff's name although he would continue to reside there. Both counsel confirmed that the proposed arrangement was lawful and that there was nothing objectionable about the way in which the plaintiff and the defendant proposed to take advantage of the 59% discount on the purchase price available because the defendant had been a long term tenant of the NIHE. The court was not asked and did not determine whether the Declaration of Trust was a disposal entitling NIHE to seek re-imbursement of the discount.

[8] The plaintiff arranged her own accommodation and moved out in late 2005. She has latterly been residing at Mount Zion in Strabane. This also comprises rented accommodation. The fall out occurred according to the plaintiff in July 2007 after the defendant had received a large capital sum in respect of backdated pension credit from the Government. This allowed him to pay off the balance due in respect of the mortgage which he promptly did.

[9] Before remitting the balance due in respect of the mortgage, the defendant told the plaintiff in the kitchen of the property that he no longer required her assistance and that their arrangement was over. Therefore she would no longer be entitled to any interest in the property. The plaintiff reminded him of his legal duty and the Declaration of Trust that he had signed. They parted on poor terms. Two to three days later he rang to tell her that he had paid off the balance due in respect of the mortgage and that the house was in his name, would remain in his name and was unencumbered. She had no interest in the property henceforth. I understand that subsequent to this conversation the defendant has now struck up a relationship with Bernard Rouse Junior, the plaintiff's brother. He is a married man with four children.

[10] The defendant seeks to make the case that it was a fundamental term of the arrangement between him and the plaintiff that she would continue to reside with him and maintain the property. He claims that she broke her word and by reason of her misrepresentations and conduct she is estopped and precluded from claiming any legal or beneficial interest in the defendant's property. He also claims that she agreed that the arrangement could be brought to an end by him discharging the balance due on the mortgage and repaying the monies to the plaintiff which she had used to pay off the instalments on the mortgage. He claims that she had been guilty of unconscionable behaviour.

[11] The Declaration of Trust made on 29 June 2004 states:

“As BERNARD ROUSE is a Transferee under a Deed of Conveyance made the 29 day of June 2004 between the Northern Ireland Housing Executive of the one part and the said BERNARD ROUSE of the other part by virtue of which the Transferee became seized of an estate in fee simple in the premises therein described as ALL THAT AND THOSE the dwelling house and premises situate and known as 16 Waterside Street, Strabane in the County of Tyrone being part of the lands more particularly described in the map whereto and thereon surrounded by a red line AND WHEREAS DAWN ROUSE of 16 Waterside Street, Strabane in the County Tyrone has arranged the finance for the purchase of the said dwelling and is making all payments in connection with the said

finance AND WHEREAS the said DAWN ROUSE has paid all expenses in connection with the said transfer NOW I HEREBY ACKNOWLEDGE that I do not hold the property for my own absolute use and benefit but upon trust hereinafter declared.

NOW IT IS HEREBY DECLARED by me that I hold the above mentioned property upon trust for the said DAWN ROUSE absolutely and I acknowledge that I do not have nor shall I acquire any beneficial interest or equity in the premises.”

If the defendant had intended to make it a condition of the transfer that the plaintiff would stay with him and/or maintain the property as the defendant now alleges, then Mr McGarrigle as his solicitor would have been bound to have made this clear in the Declaration of Trust or executed some other side agreement or done something in some way to protect the interests of his client should the plaintiff have tried to resile from the original agreement. It is inconceivable that the defendant would not have told his solicitor of the full terms of the arrangement or that the solicitor on being told would not have taken steps to protect the defendant’s interest should the plaintiff have sought to resile from the original agreement/arrangement.

[12] The Law of Trusts (2<sup>nd</sup> Edition) at 5.64 states:

“A trust which is completely constituted, whether by an effective transfer of property to a trustee or by an effective and binding declaration of oneself as trustee, cannot be revoked by the settlor qua settlor, unless he has reserved himself and expressed the power to do so in the trust instrument; and a completely constituted trust can be enforced by its beneficiary, irrespective of whether that, or any other, beneficiary is given consideration for the creation of the trust.”

There was no reservation by the defendant of any power to revoke in the Declaration Trust.

[13] I have heard the plaintiff. I have seen her give her evidence. She has impressed me. The defendant has not given evidence. He is therefore under a disadvantage. However the plaintiff has been cross-examined. Her evidence has been tested. I conclude without hesitation that she is truthful, forthright and credible. I accept that she has been telling me the truth.

[14] In all the circumstances, and in particular on the basis of the facts that I have found, I conclude that the defendant’s case has no substance either in law or in fact. The defendant holds the property on trust for the plaintiff and he can continue to

reside in the property until he no longer wishes or is unable to do so. There is only one issue that requires further consideration. This is whether or not the plaintiff has been unjustly enriched by the fact that the defendant has paid off the mortgage (albeit at his own initiative) and that therefore the plaintiff is relieved from making further mortgage repayments on the property. This is matter that the parties should resolve between themselves in the interests of family harmony. If this does not prove possible, I will hear further argument. In all the circumstances I declare that the Declaration of Trust is legal, valid and binding. Accordingly the defendant holds 16 Waterside Street, Strabane on the terms appearing on the Trust for the plaintiff absolutely, but the defendant has the right to reside there until his death rent free.