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THE HIGH COURT

1979 No. 413 SP

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964 AND
IN THE MATTER OF PATRICK JOSEPH CARRIGAN AND ANN MARIE
CARRIGAN AND
IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND
CHILDREN) ACT 1976 AND
IN THE MATTER OF THE MARRIED WOMEN'S STATUS ACT, 1957

BETWEEN:-

BERNADETTE MARY CARRIGAN

Plaintiff

- and -



PATRICK JOSEPH CARRIGAN

Defendant

Judgment delivered by O'Hanlon J. the 12th May, 1983.

In the Special Summons herein dated the 11th July, 1979,
the Plaintiff claims relief under several different headings
and under the provisions of a number of different statutes,
against her husband, Patrick Joseph Carrigan.

Orders have already been made by the Court in respect of
custody of, and access to, the children of the marriage and
in respect of the Plaintiff's claim for payment of maintenance
for the support of herself and of the two children of the

marriage. The Defendant has now applied to the Court in the same proceedings to deal with the claims made by the Plaintiff in Paragraphs 3, 4 and 5 of the Special Summons relating the the lands comprised in Folio 6090F of the Register of Freeholders, County of Meath, with the dwellinghouse situate thereon, in respect of which the Plaintiff claimed a declaration that the said lands and premises constituted the family home, within the meaning of the Family Home Protection Act, 1976. She further claimed that the Defendant should be restrained from disposing of the property by sale or mortgage or otherwise howsoever, and claimed a declaration that she was entitled to the entire beneficial interest or alternatively some share in the beneficial interest in the said property.

Subsequent to the institution of these proceedings the Plaintiff caused a lis pendens to be registered against the said property, and also a notice pursuant to Sec. 12 (1) of the Family Home Protection Act, 1976. As a result, the Lombard and Ulster Banking Company, which has obtained an

order for possession against the said lands in its capacity as mortgagee has been unable to exercise the power of sale which it claims to possess over the property, and it is largely to solve this impasse that the present application has been made to the Court on behalf of the Defendant.

An examination of the Folio reveals that the registered owner of the lands is not the Defendant, but a limited company, P.J. Carrigan Limited, which became registered as full owner on the 5th May, 1979. An extract from the Register in the Companies Office, dated 23rd November, 1978, gives the names of the Directors of the Company as Owen Carrigan (brother of the Defendant) and Kathleen Carrigan (wife of Owen Carrigan), while the Defendant is described as Secretary of the Company. A Special Resolution was passed on the 24th November, 1978 to include in the Objects Clause of the Company a provision entitling it to purchase lands and premises, including dwellinghouses, for the use of the directors, officers or employees of the Company, and the said Owen Carrigan and Kathleen Carrigan are therein described as the holders of all

the shares then issued of the said Company. The date of incorporation of the Company was given by the Defendant as the 21st July, 1978. The agreement to purchase the house at Jordanstown, Co. Meath, was made between the Vendor and the Defendant in or about the month of February, 1978, before the Company was incorporated, but when the time came to close the sale the assignment was taken in the name of the Company.

The documents relating to the sale were not produced in evidence (other than a certified copy of the Folio). The Defendant gave evidence to the effect that the purchase price was in the region of £26,000/£26,500. He said that his brother, Owen, provided the deposit, amounting to about £6,000/£6,500, and that the balance was provided by a loan made by the Lombard and Ulster Bank to the Company of £20,000, on foot of which a charge was registered in their favour on the Folio.

When the time came to insure the building, however, the proposal submitted to the Norwich Union Insurance Company was in the name of "P.J. Carrigan" and the policy was issued in

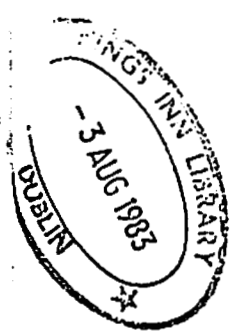
favour of "P.J. Carrigan and Others", the interest of the Lombard and Ulster Bank having been noted by the insurers.

The house was destroyed by fire on the 22nd May, 1981.

From the time the house was purchased it was used as a family home by the Plaintiff and the Defendant, until the Plaintiff left in or about the month of March, 1979, claiming that the Defendant had made it impossible for her to continue living with him.

Having considered all the evidence given by the Plaintiff and the Defendant I am satisfied that the Plaintiff made no financial contribution to the purchase of the house, either in respect of the provision of the deposit or in contributing to payment of the mortgage liability, and accordingly I commence by dismissing the claim brought by her to be entitled to the said lands and premises or to some share in the beneficial interest in the said property.

I now have to consider whether she is entitled to prevent a sale taking place of what was de facto the family home during the period immediately preceding the break-up of her marriage with the Defendant.



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The Lombard and Ulster Banking Company having made an advance of £20,000 to the limited company, P.J. Carrigan Limited, and having obtained a charge on the property referred to in these proceedings, later obtained an Order for possession against the Company and wish to exercise their power of sale as mortgagees over the property. The amount now outstanding on foot of the mortgage is in the region of £30,000 and the property with the burnt-out house thereon was sold by auction on the 5th October, 1982, for £15,900. The completion of this sale is held up by the Plaintiff's action in causing a lis pendens to be registered against the property, and also a notice under Sec. 12(1) of the Family Home Protection Act, 1976.

The Plaintiff is highly suspicious concerning the entire transaction whereby the dwelling-house in Co. Meath was purchased in the name of a limited company, in which the Defendant was neither a director nor a shareholder, and believes this was merely a device to ensure that the provisions of the Family Home Protection Act, 1976, would have no application in the event of the property being subsequently put up for sale. Her suspicions may indeed be

well-founded. The hearing of the case was adjourned to enable Owen Carrigan and Kathleen Carrigan to attend court and confirm that the property was purchased bona fide for a limited company owned and controlled by them, but they elected not to come to court, and as they reside at Belcoo, Co. Fermanagh, their attendance could not be compelled by subpoena. There is the further circumstance that the proposal for insurance of the property was made in the name of the Defendant and the policy issued in his name, and although it was stated that a letter was subsequently sent to the insurance company seeking to have the insurance changed into the name of the limited company, the insurers have no record of ever having received such a letter.

Mere suspicion is not enough, however, to support a finding that the property was, in fact, purchased in trust for the Defendant, although registered in the name of the limited company and assigned to it. The mortgage moneys were advanced to the limited company and provided the greater part of the purchase moneys. The Defendant claimed in

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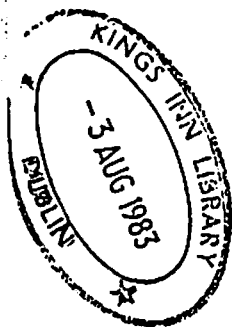
evidence that he and his wife and children were allowed to have the use and occupation of the property by leave and licence of the limited company owned and controlled by his brother and sister-in-law. Even if it could be shown by affirmative evidence that the transaction was a mere subterfuge designed to defeat the purposes of the Act of 1976, and that the Defendant should be regarded as having acquired the entire beneficial interest, or some share and interest therein, I cannot see how such a finding would now benefit the Plaintiff, since the property is no longer habitable, and the proceeds of sale of the derelict site will not suffice to meet the claims of the mortgagees.

On the evidence which has been produced before me, I must hold that the Defendant has not been shown to have an interest in the property referred to in Folio 6090F of the Register of Freeholders, County of Meath, within the meaning of that expression as defined in Sec. 1 of the Family Home Protection Act, 1976, that is to say, "any estate, right, title or other interest, legal or equitable". This being

so, the Plaintiff was not entitled to register the notice referred to in Sec. 12 of the Act in relation to this property; neither is she entitled to have the registration of the lis pendens continued on the Folio.

In these circumstances, I propose to make the Orders sought by the Defendant - (1) declaring that the Plaintiff is not entitled to any part or share of the beneficial interest in the said property; (2) directing that the notice she has caused to be registered under Sec. 12 of the Family Home Protection Act, 1976, should be removed from the Folio, and (3) directing that the lis pendens registered against the property be vacated.

The Plaintiff is left with such rights as are given her under the Family Law (Maintenance of Spouses and Children) Act, 1976, (as amended), for the maintenance of herself and the children of the marriage. It is useless pursuing a claim in respect of a home which has become derelict and uninhabitable. The Defendant is a guarantor of the liability of the company which is the registered owner of



that property. It is in the Plaintiff's interest that that property should be sold as quickly as possible to clear off the mortgagee's claim, in so far as it is possible to do so, as otherwise interest will continue to accumulate and the Defendant's financial liabilities will continue to increase. When the property has been sold, and the insurance claim has been disposed of, a clearer picture should emerge as to the Defendant's ability to provide adequately for the needs of his wife and children. If there is a valid claim for maintenance under the provisions of the relevant Act of 1976 (as amended) then the Defendant carries the obligation to provide a home for his wife and children in substitution for the home which they previously occupied in Co. Meath in addition to providing for their other daily needs. This is a claim which can best be dealt with in the context of the claim for support under the Act of 1976 rather than by pursuing a claim which I have found to be unenforceable in any event, in respect of the derelict and

burnt-out property in Co. Meath.

Approved

R. J. O'Hanlon

R.J. O'Hanlon

12th May, 1983.

Note

The Plaintiff appeared in person.

Counsel for the Defendant:- Patrick Keane, S.C;
(with him Patrick Hanratty, BL), instructed by Robert
Walsh, Solicitor.

Cases referred to:-

Barry v. Buckley (Judgment of Costello J., (unrep.)
delivered the 9th July, 1981).

Glynn v. Buckley, (1980) I.R.