

IN THE MATTER OF THE MARRIED WOMENS STATUS ACT 1957
AND IN THE MATTER OF THE COMPANIES ACT 1963
AND IN THE MATTER OF THE FAMILY HOME PROTECTION ACT 1976

BETWEEN:-

T.

Plaintiff

and

T.

Defendant

Judgment of Mr. Justice Egan delivered the 15th day of July 1985

The Plaintiff in this case (hereinafter referred to as "the wife") claims an Order pursuant to Section 12 of the Married Womens Status Act 1957 determining the respective rights, title and interests of herself and the Defendant (hereinafter referred to as "the husband") in certain properties.

Her claim included the ownership of shares in a Company and the leasehold premises in Dublin where the Company operated a Restaurant until early this year. I have not been asked by either party to adjudicate on this position of the claim because the Company, although not yet in formal liquidation, is complete insolvent and it is common case that its assets must inevitably vest in its creditors. The history of the Restaurant and the

conduct of its affairs are nevertheless relevant to other claims herein for reasons hereinafter appearing.

The claims which must be dealt with are:-

- (a) the Family Home in Dublin
- (b) the furniture and fittings therein
- (c) property in the West of Ireland to which I will refer as "E" Lodge
- (d) certain items of silver
- (e) the proceeds of a certain Insurance Claim in respect of luggage owned by the wife which was stolen in London.

A major difficulty arises in the determination of these claims. The documentary evidence available is insufficient to supply the answers and much depends, therefore, on the credibility of the oral evidence given by the wife and the husband. I regret to state that I have grave reservations in regard to the evidence of both parties and I am satisfied that neither of them has been fully candid. I am satisfied that their life style was extravagant while things were going well. Frequent references were made to holidays outside Ireland. The husband was drawing large weekly sums from the Restaurant. The wife had accounts in expensive department stores in London and in Dublin and informed me that she owes £4,000 on foot of the Dublin account. Her estimate of the value of her stolen luggage was in the region of £10,000. Their two daughters were educated in an expensive school in England. With the collapse of the Restaurant and the marriage their joint incomes are now virtually nil.

The family home was purchased for £27,000 on the 27th July 1973 in the name of the husband. On the 26th October 1983 it was offered for sale at the office of auctioneers and contracts

were signed for a purchase price of £86,000. The wife endorsed her consent on the contracts but subsequently repudiated her consent on the grounds that she had been left with the impression that she would be receiving a lump sum settlement of at least £40,000 out of the proceeds. This allegation was made by her in an affidavit but the terms of any agreement (if there was an agreement) were not argued or referred to in the oral evidence. It is not now necessary for the Court to deal with this matter as the purchaser subsequently withdrew from the sale and the transaction is now at an end. There is a mortgage on the premises in favour of the Lombard & Ulster Banking Ireland Limited and in a letter produced in evidence and dated the 12th March 1985 their claim was in the sum of £26,632.14 as of that date with a claim for continuing interest thereafter at the rate of £15.06 per day. The home is at present occupied by the wife and the only son of the marriage, a boy aged 9, who spends most of his time with her. The two daughters (aged 18 and 16) reside mainly with the husband in other premises which he rents. Issues of maintenance are not before this Court but I was led to believe that inconclusive proceedings took place in the Circuit Court.

As regards the actual purchase of the family home, the husband's evidence was that £15,000 came from a London Bank by way of loan which was subsequently paid off when the loan from Lombard & Ulster was obtained. He gave evidence that another £5,000 or £6,000 came from the sale of a leasehold interest in another Restaurant (to which I will refer as the "second Restaurant") which had been sold for £11,000 prior to the purchase of the family home. He also swore that he had borrowed £1,500 from a brother-in-law of his who was not called to give evidence. I should say, in

this connection, that the evidence in relation to the purchase of the "second Restaurant" is inextricably tied up with the success of the original Restaurant and the profits emanating from it. Finally the husband gave evidence to the effect that the remaining money required for the purchase of the family home came in the form of a loan of £5,000 from his father. Satisfactory evidence in this connection was not forthcoming. His father did not give evidence and there was no corroborative documentary evidence. The wife was unable to assist the Court beyond stating her belief that the money for the family home (apart from what was borrowed originally from the London Bank) emanated from the profit of the original Restaurant and the sale of the second Restaurant. I intend to resolve my doubts in regard to the husband's evidence in a manner which I hope will be equitable having regard to other conclusions to be mentioned later.

Before stating my findings in regard to the family home it is essential that the affairs of the Restaurant be dealt with. It was set up as a Limited Company in 1968 and there were originally four shareholders consisting of the husband, the wife, Mr. K. and Mr. F. They were equal shareholders. The husband gave evidence that each of them put up a sum of £600 but the wife gave evidence that most of the required money, in particular a sum of £2,000, was obtained by her from a friend of hers, Mr. G. No evidence whatever was given by Mr. F., Mr. K., or Mr. G. and here again it is next to impossible to make a positive finding as to what actually occurred. Mr. F. was gone from the business within a year and his shares were transferred to the husband for a nominal sum. Approximately 3 years later Mr. K. was also gone from the business and his shares were also transferred to the husband for a nominal sum but Mr. K. was also given approximately £2,000 to compensate him for his loss

of employment in the Restaurant. I am fully satisfied that Mr. F. and Mr. K. were "bought out" from the profits of the Restaurant and not from personal funds of the husband. In my view, therefore, despite the formal transfers of the shares to the husband the wife had an equal equitable right to their acquisition and ownership. Both the husband and the wife contributed in varying degrees to the success of the Restaurant and also the second Restaurant. I do not find it necessary to deal with the extent and nature of their separate contributions.

A good deal of time was spent in dealing with the monies taken by the parties from the business. Weekly sums varying from £30 to £60 per week were paid to the wife but the husband drew sums which eventually rose to £500 per week before the collapse. There was no formal Company authority by way of resolution which entitled the husband to draw such large sums. He stated that much of the money was required for the upkeep of the family and there must be some truth in this. It would again be quite impossible to arrive at any finding as to whether he was helping himself to an undue share of the profits and, if so, to what extent. I also have doubts as to the truth of his evidence to the effect that he borrowed £4,000 from his brother for the purchase of the second Restaurant. There was no corroborative evidence in this regard. In any event, the only relevance of all this is to trace the source of the monies which went into the purchase of the family home.

Doing the best I can on the highly unsatisfactory nature of the evidence, I have come to the conclusion that the family home with the assistance of the loan from the London Bank was bought with monies to which the parties were equally entitled and that the repayments to the Lombard & Ulster emanated from

similar monies. I will make a Declaration, therefore, that the husband and wife are entitled in equal shares to the family home with an equal obligation inter se in respect of the monies due and continuing to accrue due to the Lombard & Ulster. It will be noted in this regard that I may be favouring the wife to some extent as it is possible that the husband's evidence as to borrowing from his father and his brother-in-law in relation to the purchase of the family home and borrowing from his brother in relation to the purchase of the second Restaurant may, to some limited extent, be true.

Regarding the claim in respect of "E Lodge" in the West of Ireland, this was originally the property of the husband and his brother in equal shares. In 1978 the husband states that he agreed to buy out his brother's share for a sum of £15,000 of which he says only about £4,500 has been paid. The wife could not have the remotest possible claim to the husband's original moiety in this property and her claim at best could only concern the half share which was bought from the brother on the basis that payment for this was made from the profits of the Restaurant. I am satisfied on the evidence, however, that very little has, in fact, been paid by the husband to his brother. For this reason, therefore, and also for the reason that I may have favoured the wife in regard to the family home I will make a Declaration that the wife has no title, right or interest in the property known as "E Lodge". The husband's parents appear to have a life interest in this property and documents in the nature of a Trust in favour of the children of the husband and the wife have also been executed with a charge of £9,500 in favour of the brother. These are further reasons for my reluctance to interfere with the already complicated nature of the title to this property.

I should have made it clear that I will make no Order pursuant to Section 5 of the Family Home Protection Act 1976. In so far as the Lombard & Ulster are concerned their debtor was the husband but as between the husband and the wife there is a joint responsibility for repayment.

I now come to the Insurance Claim in respect of the wife's luggage. The husband received a cheque for £5,000 from the Insurance Company but he alleges that much of this was used for the discharge of debts owing by the wife. He also alleged that portion was used to contribute towards the cost of the education of the two daughters in England even though there was a trust fund from which these fees were usually paid. I do not propose to go into detail regarding their respective evidence on this issue which was not impressive on the issue of credibility. On balance, however, I will make an Order that the wife is entitled to half the money which was paid to the husband and I will direct, therefore, that he shall pay to her the sum of £2,500.

As regards the furniture, many items have been agreed as being the exclusive property of the husband and a few items have been agreed as being the exclusive property of the wife. They do not require to be itemised by me. Most of the other items were purchased by one or other for the family home or were given to them as presents. I will declare them to be jointly owned with three exceptions:-

- (a) For reasons stated by the wife in evidence and not denied by the husband, the Persian Carpet or Rug valued at £1,600 will be declared to be the exclusive property of the wife.
- (b) The Vienna Dessert Plates will also be declared to be the exclusive property of the wife.

- (c) The Victorian Walnut Bureau in the bedroom of the wife will also be declared to be her exclusive property.

As regard the Silver, most of it would appear to be the property of the husband with the following exceptions:-

The wife is solely entitled to:-

- (a) The 4 Geo III teaspoons valued at £110.
- (b) The monogrammed Cigarette Case valued at £60.
- (c) The embossed heart-shaped box valued at £35.
- (d) The three pierced sweet dishes valued at £155.
- (e) The 13 plain box match holders valued AT £780.
- (f) The flat book match-box holder valued at £70.
- (g) The 4 old Sheffield Salts valued at £140.
- (h) The three OE table spoons valued at £24.
- (i) The 4 plain Butter Knives valued at £112.

The following are jointly owned by the husband and wife:-

- (a) Silver Tea Caddy valued at £190.
- (b) Silver toast rack valued at £140.
- (c) Napkin ring valued at £40.
- (d) Small round teapot with ivory handle valued at £230.
- (e) Pepper Mill valued at £185.
- (f) Plate E.P.B.M. teapot valued at £85.
- (g) Small round teapot (black handle) valued at £60.
- (h) 15 Lobster picks valued at £90.
- (i) Brass Carriage Clock valued at £180.
- (j) Grapefruit scissors valued at £22.
- (k) Toast racks valued at £18 and £27.
- (l) Cheese scoop valued at £20.
- (m) Serving Spoon (London 1830) valued at £175.
- (n) Two fiddle and shell pattern teaspoons valued at £50.

B.F. Egan