

Neutral Citation No: [2020] NICH 13

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

Ref: McB11280

Delivered: 03/07/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

2017/41599

BETWEEN:

ERNEST GRAHAM

Plaintiff;

-and-

**MATTHEW GRAHAM
AND
KAREN GRAHAM**

Defendants.

McBRIDE J

Addendum judgment

[1] Judgment was delivered on 28 April 2020. At paragraph [118] of that judgment the court made an order granting the farmhouse and outbuildings at The Graan together with the 48 acres known as Ratona to the first named defendant. The court further made a declaration that all the other lands were owned absolutely by the plaintiff.

[2] The court invited the parties to draft an order to reflect the conclusion set out in the judgment and to append the appropriate maps. The court further stayed the order for 28 days “to allow the parties, if they so wished, to agree an alternative method by which the case can be resolved, whether this is by raising the sum of £500,000 or by the transfer of a different portion of land equivalent to this amount”.

[3] The court agreed to hear submissions in respect of this in the absence of any agreement by the parties.

[4] After judgment was delivered correspondence was received by the court as follows: (All correspondence is attached to this judgment for convenience and completeness.)

- (a) By letter dated 4 May 2020 the plaintiff's solicitors wrote to the court advising that the court had miscalculated the value of the lands and in particular had erred in stating at paragraph [7] that the total value of the lands in dispute was £2M. They advised that the valuation of The Graan at £1.5M included the lands at Ratona, although these lands had been separately valued at £350,000. Consequently they stated the lands in dispute were worth in total £1.65M rather than the figure calculated by the court of £2M. They further advised that the lands which had been sold to satisfy the Northern Bank debt were sold for £840,000 and not £1M. Therefore the total value of the farm including the lands which had been sold was £2.49M and not £3M as referenced by the court.

Secondly, they expressed concern that the miscalculation in valuation infected the decision making of the court set out at paragraph [117]. In their opinion the court had determined that the defendant was entitled to a half share of the total value of the farm less the £1M he had already received. Half the value of the farm valued at £2.49M less the £1M already received by the defendant would have equated to an award of £245,000 rather than the award of £500,000 and they invited the court to amend its ruling accordingly.

Thirdly, they referred to typographical errors at paragraphs [59] and [102].

- (b) On 5 May the plaintiff's solicitor sent a map based on the order the court proposed to make.
- (c) On the same date the defendants' solicitors wrote to the court advising that it would be inappropriate for the court to take account of the plaintiff's correspondence.
- (d) On 6 May the plaintiff's solicitors sent a map based on their calculation of the figure due to the defendant.
- (e) On 12 May the court wrote to both the plaintiff and defendants' solicitors advising that it would amend the typographical errors at paragraphs [59] and [102]. The court further advised that if the defendant agreed that the valuation of The Graan included the lands at Ratona the court would amend the judgment to reflect this. The court further advised that the value attributed to the lands sold to settle the Northern Bank debt in the judgment was an approximate valuation of £1M. In addition the court advised as follows:

"It is not the court's ruling that Matthew was to receive 50% of the value of the farm. Rather the court

took the view that 'in the round' Matthew was to receive a further sum of £500,000 to compensate him for the loss of home and income together with the £1M he had already received.

The court appreciates the difficulties faced in dividing lands but in the absence of agreement had to make an order. It did however give the parties the opportunity, by agreement to come up with another way to pay the sum of £500,000 and the court is happy to hear submissions from the parties in relation to any such proposals."

- (f) On 21 May 2020 the plaintiff's solicitors requested and the court granted an extension of time to prepare maps to be appended to the court order.
- (g) Separately the defendants' solicitors advised the plaintiff's solicitors that the defendant Matthew Graham had not communicated with them in relation to mapping and advised "if he contacts us again ... we will immediately revert to you".
- (h) The defendant wrote personally to the court on 18 May. The court replied on 21 May 2020 advising that the defendant's solicitors remained on record.
- (i) On 22 May the court issued directions administratively.
- (j) On 9 June a draft Notice of Appeal was e-mailed to the court by the plaintiff's solicitors.
- (k) The court directed a remote review hearing on Thursday 25 June 2020.

Submissions by Counsel

[5] Ms Fee of counsel appeared on behalf of the plaintiff instructed by Murnaghan & Fee, Solicitors and Mr McEwan of counsel instructed by Walker McDonald, Solicitors, appeared on behalf of the defendant. The court is grateful to counsel for their submissions.

[6] The parties agreed that paragraphs [59] of the judgment should be amended to change the date of August 2004 to August 2014 and further agreed that paragraph [102] should be amended to change the date of 2004 to 2014.

[7] In relation to the question of valuation Ms Fee advised that there were two valuations. One for The Graan and a separate valuation for the lands at Ratona. She

submitted that if one looked at the field maps and list of field numbers scheduled to the valuations it was clear that the valuation of The Graan included the lands at Ratona. Mr McEwan advised the court that he had never been provided with the field maps and list of field numbers and consequently was not in a position to comment. Ms Fee agreed to provide these maps to the defendants' solicitors and the court. Ms Fee further advised the court that the field maps would demonstrate that the acreage of Ratona was approximately 35 acres and not 48 acres as referenced by the court in its judgment.

[8] Mr McEwan and Ms Fee further advised the court that no agreement could be reached between the parties because the defendant Matthew Graham, although represented by counsel and solicitor wanted to speak directly to the plaintiff's solicitors and the plaintiff's solicitors felt unable to speak to him as a result. The defendants' solicitors wanted to engage a mapping expert but the defendants failed to put them in funds. As a result they were unable to engage constructively with the plaintiff's solicitors and so an impasse had been reached. In all the circumstances the parties considered that the court should make the order.

[9] The plaintiff sought a stay on any order made as they intended to appeal the judgment. Mr McEwan had no instructions to consent or object to this application.

Consideration

[10] In light of events which had arisen post judgment the court considered that it was necessary in the circumstances to issue an addendum judgment to address those issues. The parties agreed with this course of action.

[11] The court amends paragraphs [59] and [102] so that the reference to August 2004 in paragraph [59] be amended to read August 2014 and the reference to 2004 in paragraph [102] be amended to read 2014.

[12] The court has now received the additional field maps and schedule of field numbers attached to the valuations. From these documents it appears that the valuation of £350,000 for the Ratona lands included field numbers 1, 15B, 15C, 15D, 16A, 17A, 17B and 20B. The total field area included in the valuation of Ratona is described as 35.88 acres with a "MEA" of 35.014 acres. In light of this documentation the court amends the judgment at paragraphs [117] so that the reference to 48 acres is substituted by a reference to "35 acres approximately".

[13] The court now having the benefit of the field map and schedule of field numbers which includes details of acreage is now satisfied that the valuation of The Graan at £1.5 M included the valuation of the lands at Ratona at £350,000. The court however does not accept the submission that there was a miscalculation of the value of the lands sold to settle the Northern Bank debt and therefore does not amend the reference in the judgment to £1M in respect of these lands on the basis that that £1M was referred to in the judgment as an approximate valuation.

[14] The court therefore finds that the total value of the lands in dispute is £1.65 M, which consists of The Graan valued at £1.5M and the lands at Cleggan and Moneyourgan valued at £ 150,000. It therefore finds that the total value of the farm before sale of lands to settle the Northern bank debt was £2.65M rather than the figure of £3M referred to in the judgment. Accordingly, the court amends the judgment to reflect these findings. Consequently paragraph [7] should be amended as follows:

- The sentence commencing "He valued the farmhouse..." and the next sentence should be deleted and substituted with, "He valued the farmhouse, sheds and the farm of 128.5 acres at The Graan at £1.5 M which valuation included the valuation of approximately 35 acres at Ratona in the sum of £350,000. The lands in dispute therefore in total are valued at £1.65M"
- The last sentence of paragraph [7] should be deleted and substituted with the following; "Therefore the entire value of the lands owned by the plaintiff before payment of the Northern Bank debt was approximately £2.65M."

Paragraph [117] should be amended as follows:

- Delete the second sentence and substitute it with the following; "The expectation in this case was the entire farm which equated to £2.65M."
- Delete the reference to 48 acres and substitute with words "approximately 35 acres"

Paragraph [118] should be amended as follows:

- In the first sentence change the reference to 48 acres to "approximately 35 acres".

[15] In so far as the court is entitled to review its decision given the amended valuation of the land the court refuses the plaintiff's request to amend its reasoning set out at paragraph [117] and rejects the submission that it should change its conclusion in respect of the order required to satisfy the defendant's equity. For the reasons set out in the correspondence sent by the court to the plaintiff's and defendants' solicitors dated 12 May 2020 and for the reasons which appear below the court does not consider that the reasoning set out in paragraph [117] requires to be amended. The court does not accept the submissions of the plaintiff that the Court decided the defendant was entitled to ½ of the total value of the land less £1M and therefore erred in awarding a sum equivalent to £500,000 because the lands were wrongly valued and in light of the amended valuation the appropriate award should be in the order of £250,000. As appears from paragraph [117], in calculating the equity due to the defendant the court took into account a number of factors and gave different weight to each factor according to its importance based on the particular

facts of this case. The valuation of the land was but one of the factors taken into account. After considering all of the relevant factors and after giving particular weight to the need to compensate the defendant for loss of home and income the court concluded that the equity in this case should be satisfied by giving the defendant the farmhouse, yard and outbuildings at the Graan together with the lands at Ratona. These lands together are worth £0.5M. The court notes the revised valuation of the lands in dispute. The court concludes that the change in value of the lands in dispute from £3M to £2.65 M does not affect its conclusion that the first named defendant's equity is satisfied by the transfer of the farmhouse, yard and outbuildings at The Graan together with the lands at Ratona comprising some 35 acres approximately. This is because the weight the court attached to the value of the lands was significantly less than the weight attached to the other factors set out in paragraph [117] and in particular the weight afforded to the need to compensate the defendant for loss of home and income. Consequently, the revised valuation of the land from an approximate valuation of £3M to £2.65M is not of a sufficient amount to change the conclusion of this court that the equity should be satisfied in the manner set out in paragraph [117]. Accordingly, the court does not change its reasoning in paragraph [117] and in particular does not change the figure of £0.5M referred to in paragraph [117]. For these reasons the terms of the order set out at paragraph [118] remains unchanged.

[16] The court had encouraged the parties to make submissions about the most appropriate division of the land to satisfy the first named defendant's equity. Unfortunately, the parties are unable to agree any means by which the defendant could receive alternative lands and/or cash to the value of £0.5M. Consequently, the court is now required to make an order in the terms of its judgment. Given the failure of the parties to consider an alternative approach the court does not have the benefit of submissions by the parties as to the consequences of the proposed order in terms of how it may affect the lands retained and the lands transferred. In particular, the court does not know if the proposed order will adversely affect the value of the lands retained/transferred; affect rights of way and/or whether there is a more advantageous way to divide the lands which would still enable the defendant to obtain lands having a value equivalent to £0.5M.

[17] Consequently, the court has no alternative but to make an order in the terms set out at paragraph [117] of the judgment and accordingly the court orders as follows:-

- (a) The farmhouse at the Graan together with the grounds, yards and outbuildings more particularly delineated in red on map 1* attached hereto together with the lands known as Ratona which comprise field numbers 1, 15B, 15C, 15D, 16A, 17A, 17B and 20B as described in the DEARA 2014 Scheme Map attached hereto and more particularly hatched in yellow in the map attached hereto, be forthwith transferred by the plaintiff to the first named defendant.

- (b) The transfer shall be effected by the plaintiff and the plaintiff shall be responsible for the transfer costs.
- (c) Otherwise no order as to costs.

*The plaintiff shall provide map 1 within 7 days of receipt of this Order and this map must reflect the area referred to in the valuation by Montgomery Finlay & Co dated 3rd December 2018 as Lot 2 Area 1.

[18] The court stays the order for 14 days. In the event an appeal is lodged within that 14 day period the court stays the order until further order of the Court of Appeal.