Neutral Citation No. [2011] NICh 22

Ref: **DEEH6097.T**

Judgment: approved by the Court for handing down

Delivered: 27/10/11

Ex tempore

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

CIARAN DONNELLY

(Plaintiff) Appellant;

and

BERNADINE MARY HEGARTY AS PERSONAL REPRESENTATIVE OF JAMES DONNELLY, DECEASED

(Defendant) Respondent.

DEENY J

[1] This is an application brought on behalf of Bernadine Mary Hegarty, the Respondent, to an appeal from Mr Arthur Moir sitting as an Acting Registrar of Titles when he rejected the Appellant's, Ciaran Donnelly's, application to be registered as the owner of Folio Nos 21930 and 21938 of County Armagh pursuant to Section 53 of the Land Registration Act 1970. The matter was heard before the Acting Registrar and in the course of the hearing the representations on behalf of Mr Donnelly were to the effect that his late uncle, the registered owner of the Folios in question, had not occupied the dwelling-house on the lands or the lands for many years and that he, Mr Donnelly, had successfully run a prescriptive title against him.

[2] The second half of the case was well-known to the Respondent to this appeal, Mrs Hegarty, but the first half of the case had not really been made out in the Affidavits. I accept Mr McEwen's helpful submissions that those Affidavits accorded with the custom and practice in the Registrar's Tribunal, but it does mean that the Respondent and her Solicitor were not fully on notice of the case that was to be made. In the event, the Registrar was able to conclude that, on the basis of what evidence there was available, the late Mr Donnelly was in possession of his lands

and had not yielded exclusive possession to another person. Mr Donnelly has appealed to this court, as he is entitled to do, and the issue before the court today is whether Mrs Hegarty can bolster her earlier case by evidence which she has gathered, including and in particular a report from Mr McGlinchey, a Consulting Engineer. He visited the house, prepared a report and in visiting the house he noticed and recorded a number of matters of interest, including the presence of food with a sell by date consistent with occupation of the premises at least proximate to the death of the deceased, some medication which, with the assistance of medical notes and records and the industry of the Respondent's brother, as I understand him to be, Mr Aaron Hegarty, can be dated to the period leading up to the death of the deceased and electricity bills which were being paid as recently as March 2003, the deceased dying in April 2003. So, it is relevant evidence. It is evidence that is likely to be helpful to the court should I exercise my discretion to allow it.

[3] If one follows the judgment of Mr Justice McCollum, which I quoted with respectful approval in AIB Group v McIlroy [2011] NI Ch. 8, one would be inclined to take the view that one should. I will return to the nature of that appeal, i.e. from the Master, in a moment, but he thought that a court would find:

> "as matters of considerable importance:
>
> 1. Whether the evidence sought to be put before the court is based on information that has only recently come into the possession of the party seeking to put it in evidence.
>
> 2. Whether it was possible or feasible for that party to produce the evidence earlier.
>
> 3. Whether it related to a matter which was clearly an issue between the parties at the hearing before the Master."

I am satisfied that the matters now sought to be put before the court were not clearly an issue between the parties at the hearing before the Acting Registrar. I, therefore, probably do not need to address his 1 and 2, but it can be seen that some of that evidence has come into possession since the hearing before the Registrar in March of this year and it might be said that it was not feasible for the party to produce it earlier because they did not know they needed it. I think on those principles the court would be minded to grant the application. I think the circumstances are an exception to a general rule of the sort that I contemplated at page 4 of my judgment in AIB Group and, therefore, I am minded to grant leave to introduce the fresh evidence.

[4] I would just add one word out of caution. It may be that an appeal from the Registrar of Titles or her deputies is perhaps more akin to an appeal from a County Court Judge by way of re-hearing than to an appeal from the Master. Much of the work of the Masters is interlocutory in nature and that is one of the reasons why the court will adopt a robust approach in prohibiting parties, as Mr McEwen well put it, from having a dry run before the Master intending to put their best foot forward before the Judge. They must put their case fully before the Master so that the great weight of applications coming before the court can be dealt with expeditiously. But while it is true to say, as was the case in AIB Group v McIlroy, that the decisions of the Master can be very important and affect the ownership of land and property as here, it is, it seems to me, at least arguable that a more generous approach to permitting fresh evidence might be appropriate in an appeal from the Acting Registrar. I need not reach a final decision on this matter because I think the Respondent here has satisfied the tests set out in AIB Group v McIlroy and I grant the application to admit the evidence.