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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION (BANKRUPTCY)

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IN THE MATTER OF THE PARTITION ACTS 1868 - 1876

1990/B184

IN THE MATTER OF:

FRANCIS GERARD ROONEY

Between:

THE OFFICIAL RECEIVER FOR NORTHERN IRELAND

Applicant;

-AND-

1. FRANCIS GERARD ROONEY
2. JOSEPHINE ROONEY

Respondents.

-AND-

1990/B249

IN THE MATTER OF:

ALBERT HENRY PAULSON

Between:

THE OFFICIAL RECEIVER FOR NORTHERN IRELAND

Applicant;

-AND-

1. ALBERT HENRY PAULSON
2. MARGARET ELIZABETH PAULSON

Respondents.

_____

WEIR J

The nature of the proceedings

[1] In each of these applications the Official Receiver for Northern Ireland ("the applicant") applies under the Partition Acts 1868-1876 seeking primarily an Order for sale of a dwelling house which was formerly owned by the respective respondents (who in each case are husband and wife) as joint tenants but which became jointly owned by the applicant and the respondent wife in each case consequent upon the adjudicated bankruptcy of their respective husbands on dates in 1990. It was not disputed that neither property would be capable of physical partition. The applicant also seeks Orders for possession for the purposes of the sales and that inquiries be made and accounts taken in respect of monies spent in improving the houses and in discharging mortgage payments between the times of the bankruptcies and the present. The applications are resisted upon the grounds that in each case the applicant delayed for almost 12 years before moving to sell the respondents' homes, upon the respective family circumstances and upon the adverse effect that sales after the elapse of that period would have upon those. The facts of the matters were not significantly in dispute.

The History of the Rooneys' property

[2] On 28 February 1988 these respondents were registered on Folio DN11933 County Down as the owners of the freehold plot of land on which was erected a dwelling house in Rathfriland which they had occupied as their home since about August 1981, initially as tenants of the Northern Ireland Housing Executive. The property was charged in favour of a building society to secure advances which they used to purchase and, later, to renovate the house. On 3 September 1990 Mr Rooney was adjudicated bankrupt and on 7 March 1991 the petition of bankruptcy was registered on the Folio followed on 18 October 1991 by the registration of Mrs Rooney and the applicant's predecessor, the Official Assignee for Bankruptcy for Northern Ireland ("the Official Assignee"), as tenants in common in undivided half shares.

[3] On 14 January 1991 the Official Assignee obtained a valuation of the house in the sum of £28,000 and it appears that on 6 August 1991 the applicant wrote to Mrs Rooney although that letter has not been produced. He wrote again on 22 July 1992 saying that his interest in the property (obviously allowing for the mortgage debt) was at that time valued at £1300 and saying "if this matter is not concluded to my satisfaction in the near future I shall have no option but to put your house on the market for sale." At some time around the time of the July 1992 letter it appears that the applicant offered to sell his interest to Mrs Rooney for £701.25 but she either did not wish or was unable to do so. The applicant did not carry out his threat to sell the house. Instead, some three years later, he informed Mrs Rooney by a letter

of 6 December 1995 that he had placed the property in his Unrealised Asset Register "as you have failed to purchase your husband's equity in it. As I am registered as joint owner…you will not be able to sell this property should you wish to at some time in the future." And there, for almost seven further years until 2002, the matter between the parties appears to have rested. Meanwhile the Rooneys lived on in the house with Mrs Rooney paying the mortgage payments from her earnings as a classroom assistant until she retired in 1998 in order to become a full time carer for her husband due to his chronic ill health. From that point the mortgage interest payments were discharged by Social Security, that being by then the Rooneys' only source of income. Mrs Rooney paid for the upkeep of the house and receipts for three lots of extensive internal and external decoration between 1996 and 2000 totalling £3050 have been exhibited by her. The Rooneys have three grown up sons who frequently visit their parents but no longer live there full -time.

[4] At some time in or before 2002 the applicant conducted a review of the value of the various properties in his Register of Unrealised Assets. It is well known that Northern Ireland residential property values considerably increased in the years from the mid 1990's and the applicant found that the Rooney property had benefited accordingly. He was advised in 2002 that it was worth £60,000 but whether that was a gross figure subject to mortgage debts or represented the net equity is not clear from his affidavit. In any event the applicant concluded that it had become prudent to realise his interest in the premises with the intention of addressing the outstanding indebtedness of Mr Rooney and accordingly issued the present summons on 7 August 2002.

The history of the Paulsons' property

[5] On 5 April 1989 these respondents were registered on Folio DN15407 County Down as the owners of the freehold plot of land in Castlewellan on which was erected a dwelling house which they occupied as their home. The land was charged in favour of a building society to secure an advance which they had used to purchase the home. On 7 November 1990 Mr Paulson was adjudicated bankrupt and on 28 December 1990 the petition of bankruptcy was registered on the Folio. Thereafter, so far as the evidence goes, the applicant appears to have done nothing either to negotiate with Mrs Paulson or to move to sell the property for almost twelve years. Some office memoranda from July 1993 have been obtained on discovery which indicate that the information available to the applicant at that stage was that there was negative equity in the property and that the matter was further complicated by the fact that the building society had obtained an Order for possession although it had not then and has not since moved to enforce it. In an office memorandum of 30 July 1993 it is stated that it is intended to write to Mrs Paulson offering the applicant's interest to her for a nominal sum plus costs but it is not clear whether that was ever done. A letter was written on 2 August 1993 to the solicitors for the building society saying that there would

not appear to be any equity for the general body of creditors so that the applicant did not propose to "realise" same. The solicitors were however asked to keep the applicant advised should the society decide to enforce its order. Nothing further appears to have happened for nine years until, as in the case of the Rooneys, in about 2002 the applicant became alive to the change in the valuation position due to the supervening increase in property values and on 12 August 2002 he issued the present summons.

[6] Meanwhile the Paulsons have lived on in the property. Mrs Paulson obtained employment and paid most of the mortgage repayments with some help from their son and spent considerable amounts in the upkeep and improvement of the property. A two - bedroomed extension was added at a cost to her that she estimates at £20,000 and a replacement kitchen and central heating were also installed at a cost for materials of some £2,500 with the necessary installation work being carried out by their son. The property is occupied by Mr and Mrs Paulson and their two adult children, the son and a daughter who suffers from spina bifida. The extension has been specially designed to accommodate the requirements of the daughter's care with its own bathroom and doors wide enough to allow for the passage of her wheelchair. The daughter is heavily dependent upon her parents to look after her and see to her personal and domestic needs.

The Legal Framework

[7] In *Hunter's "Northern Ireland Bankruptcy Law and Practice"* at page 24 it is stated:

> "If the bankrupt's spouse…is in occupation as a joint owner of the land and the official assignee is unable to reach agreement with such person for the vacation of the premises, the assignees will have to apply for an order for sale under the Partition Acts …followed if necessary by an application for an order for possession"

While the matter was not the subject of argument before me I have assumed that the present applications are brought under Section 4 of the Partition Act 1868 on the basis that the applicant is in each case entitled to a half interest in the property. In so concluding I have resisted the temptation to revisit the territory so intrepidly explored by Master Ellison in *Northern Bank v Adams* (1 February 1996 unreported). If I am correct in my approach it follows that I am to apply the test provided by that section, namely that "the Court shall, *unless it sees good reason to the contrary*, direct a sale of the property… (emphasis supplied). In her invaluable and scholarly text, *"Co-Ownership of Land – Partition Actions and Remedies"* Dr Heather Conway has exhaustively reviewed the authorities on the exercise of the Courts' s.4 power to order sale and

ultimately concluded that "the personal circumstances of the opposing co-owners are …unlikely to persuade the court to refuse sale under s.4. The fact that the defendant has expended money on the property is relevant in any subsequent accounting adjustment between the parties; it does not, however, affect the substantive relief claimed."(Ibid para. [5.36])

[8] Dr Conway further examined the practice with particular reference to bankruptcy situations and her conclusion from an examination of those authorities is that "there is likely to be a strong presumption in favour of the court making an order for sale notwithstanding the objections of the non-bankrupt co-owner, since the trustee is under a statutory duty to realise the bankrupt's property for the benefit of his creditors." See, for example, the decision of Goff J in *Re Densham (a bankrupt)* [1975] 3 All E R 726 at 738 a to f in which he followed his own earlier decision in *Re Turner (a bankrupt)* [1975] 1 All E R 5 and ordered a sale notwithstanding the hardships which the co-owner wife and the children would suffer as a result of having to leave their home upon its sale. In a passage in *Re Turner*, later quoted with approval by Megarry V.C. in *Re Bailey (a bankrupt)* [1977] 2 All E R 26 at 29 d to e, Goff J said:

> "In my judgment, the guiding principle in the exercise of the court's discretion is not whether the trustee or the wife is being reasonable but, in all the circumstances of the case whose voice in equity ought to prevail?"

[9] The question of the balance to be struck between the rights of creditors and the preservation of the family home was again examined by the English Court of Appeal in *In re Citro* [1991] Ch 142, an appeal from a decision of Hoffmann J whereby he made orders for sale but postponed the sales until the youngest child of the two families involved attained the age of 16. The leading judgment of Nourse LJ reviews the authorities and discovers only one, *In re Holliday (a bankrupt)* [1981] Ch 405, where the discretion not to make an order for sale within a short period had been exercised. However in the latter case the petition in bankruptcy had been presented by the husband himself as a tactical move in order to avoid a matrimonial transfer of property order in favour of his ex - wife at a time when no creditors were pressing and he was in a position within a year or so to discharge whatever debts he had from his income. In that case a stay of five years had been placed on the sale. In the result a majority of the Court in *In Re Citro* substituted a stay for a period not to exceed six months. Nourse LJ summarised his approach to the balancing exercise in the following passage at page 156:

> "Where a spouse who has a beneficial interest in the matrimonial home has become bankrupt under debts which cannot be paid without the realisation of that

> interest, the voice of the creditors will usually prevail over the voice of the other spouse and a sale of the property ordered within a short period. The voice of the other spouse will only prevail in *exceptional circumstances. No distinction is to be made between a case where the property is still being enjoyed as the matrimonial home and one where it is not.* What then are *exceptional circumstances?* As the cases show, it is not uncommon for a wife with young children to be faced with eviction in circumstances where the realisation of her beneficial interest will not produce enough to buy a comparable home in the same neighbourhood, or indeed elsewhere. And, if she has to move elsewhere, there may be problems over schooling and so forth. Such circumstances, while engendering a natural sympathy in all who hear of them, cannot be described as exceptional. They are the melancholy consequences of debt and improvidence with which every civilised society has been familiar. It was only in *In Re Holliday* that they helped the wife's voice to prevail and then only, as I believe, because of one special feature of that case." (emphasis supplied).

[9] Both of the bankrupts in the present applications were adjudicated as such prior to the commencement of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") which contains at Article 309 (3) to (5) provisions as to the exercise by the High Court of its powers in a suit for partition (or sale in lieu) which are interesting for the purposes of comparison with the prior law that governs the instant applications. Article 309 (3) provides:

> " Notwithstanding any provision of the Partition Acts 1868 and 1876, where a person and his spouse …have a legal or equitable estate in a dwelling house vested in them jointly or as tenants in common and that person is adjudicated bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate, the High Court may make such order as it thinks fit".

Article 309 (4) provides guidance as to how the task is to be approached by the court::

> "….in a suit such as is mentioned in paragraph (3) the High Court shall make such order ….as it thinks just and reasonable having regard to-
>
> (a) the interests of the bankrupt's creditors

(b) the conduct of the spouse or former spouse so far as contributing to the bankruptcy.

(c) the needs of any children, and

(d) all the circumstances of the case other than the needs of the bankrupt."

However the seemingly wide discretion conferred by these two paragraphs is then very considerably circumscribed by the terms of Article 309 (5):

> "Where such …a suit is maintained after the expiration of one year from the first vesting …of the bankrupt's estate in a trustee, the High Court shall assume, *unless the circumstances of the case are exceptional*, that the interests of the bankrupt's creditors outweigh all other considerations." (emphasis supplied).

Dr Conway states at [9.79] of her text that *In Re Citro* was an example of a case decided under the corresponding English legislative provisions to these, namely section 336 (5) of the Insolvency Act 1986. In fact, as Nourse LJ makes clear in his judgement, section 336 actually had no application to that case because the adjudications were on 15 April 1985. However Nourse LJ does say, *obiter*, at the conclusion of his judgement that he has no doubt that subsection (5) is intended to apply the same test as that which has been evolved in the previous bankruptcy provisions.

[10] Other reported examples of the interpretation of these provisions are not numerous. One example from this jurisdiction is that of Girvan J in *Official Receiver for NI v Kearney* [1999] NIJB 24. The facts of that case were very different from the present as the husband and wife were apparently estranged and the application for sale in lieu of partition was made less than four years after the adjudication. The learned Judge, who appears by implication to have accepted the view of Nourse LJ as to the approach to be taken to the interpretation of Article 309 (5), concluded at para.13:

> "In the circumstances of this case there is nothing exceptional to outweigh the interest of the creditors who have been kept out of their money for a considerable period of time. There is nothing in the family, domestic or financial circumstances of the wife which would make the case exceptional."

There are a number of other reported examples of postponement of sale due to exceptional circumstances of which examples are the fact that a bankrupt's wife was suffering from schizophrenia where the postponement was for 13 months (*In Re Raval* [1998] BPIR 389) and the fact that the terminally-ill bankrupt was being cared for by his wife where the postponement was until three months after the death of the bankrupt (Re Bremner [1999] BPIR 185.) The high water mark in terms of the length of postponement is probably *Claughton v Charalamabous* [1999] 1 FLR 740 in which the court postponed sale until the bankrupt's wife ceased to live in the home. She suffered from renal failure and osteoarthritis which severely limited her mobility and had a poor life expectancy. An important factor in that case seems to have been that the creditors would receive nothing from the sale as the costs would consume any proceeds. However it is clear that the general approach of the English courts, once the year's grace after bankruptcy provided for by Article 309 (5) has elapsed, has been to grant orders for sale with relatively short postponements even in quite difficult personal circumstances affecting the co-owner of a matrimonial home or her family.

The Impact of the Human Rights Act 1998

[11] It may therefore be seen from this review of the authorities that the approach of the Courts in almost every reported case both prior to and since the commencement of the 1989 Order and of the 1986 equivalent English Act has been to prefer the position of creditors over that of the joint owner of the matrimonial home. However the respondents in the present applications submit that this established legal landscape has been or ought to be transformed in favour of a spouse who jointly owns the family home by the provisions of the Human Rights Act 1998 ("the Act") which came into force on 2 October 2000. The catalyst for that argument appears to have been further passages in Dr Conway's book at [9.81] and [9.83] in which she expresses the view that the Act may impact on partition actions brought by a trustee in bankruptcy in respect of a matrimonial home. Referring to an article "*Using the Human Rights Act to save the family home*" NLJ July 21 2000 p.1103 by Richman she repeats that author's view that a court may now be able to exercise a wider discretion in partition actions involving spouses or cohabitees. A similar view is expressed in *Personal Insolvency Law and Practice (3rd edition)* by Berry, Bailey and Miller at para 29.21.

[12] The respondents rely principally upon the rights contained in Articles 6 (1) and Article 8 to Schedule 1 of the Act and also referred to Article 1 of the First Protocol. In short their argument is that the applicant waited far too long to change his mind about moving to sell their homes, having caused them to believe that they could remain in them subject only to the proviso that in the long run they would not be able to sell them without recourse to the applicant as joint owner. As a result they had remained on in their homes, spent very considerable sums in discharging the mortgage payments and in carrying out

repairs, maintenance, adaptations and improvements. Moreover they were now too old to be able to start again to obtain the finance needed to acquire new homes as they would otherwise have done, and been able to do, had the applicant moved to obtain orders for sale within any reasonable period or even signalled that he might do so in the event that the equity in the properties should increase so as to make that course worthwhile. They submitted that they were further lulled into a sense of false security and thereby encouraged to act to their detriment in the ways described above by the applicant's prolonged silence and inactivity.

[13] Examples illustrative of any impact that these Convention rights may have had upon the usual practice of the courts to order sale are not numerous. In *Re Anthony Quinn (a bankrupt)* [2003] NI Ch 2 Campbell LJ dealt with the case of a woman in poor health with five children who was unable to work and therefore obtain a mortgage, who had family support living nearby and whose childrens' schools were at hand and who would find it difficult to obtain the tenancy of a suitable rented house. While the home was in the sole name of the bankrupt, her estranged husband, it was accepted that the woman had a sufficient interest to allow her to oppose the application for possession and sale. That was a case in which the application for an order for possession and sale was made after the "year of grace" allowed to occupants by Art. 309 (5) so that the court was bound to assume, in the absence of the existence of "exceptional circumstances" that the interests of creditors outweighed all other considerations. It is not clear from the judgement how long had elapsed between the adjudication on 12 June 1998 and the application for possession but it seems to have been about four years. The learned Lord Justice examined each of the personal factors mentioned above pertaining to the woman and her family.. While he appears to have broadly accepted the case that she made on each he did not conclude that either separately or cumulatively they made the particular circumstances of her case "exceptional". He then turned to consider a submission that a proportionate approach to the wife and children's Article 8 rights would dictate the charging of the debts upon the property rather than the making of an order for possession and sale. At para. 20 he dealt with that submission thus:

> "To make an order for possession is an interference with their home and must be justified under article 8(2) of the Convention. Such an order would be made in accordance with domestic law and is necessary for the protection of the rights and freedoms of others, namely the creditors of the bankrupt. A charge may protect the interests of the creditors but there is nothing to suggest that it would allow them to realise their debts at any time in the foreseeable future. In these circumstances there is a reasonable relationship of proportionality between making an order for

> possession and the aim of protecting the rights of the creditors."

The Lord Justice therefore made an order for possession with a stay of nine months to take account of the problems of relocation that would flow for the wife from her personal circumstances as described. Whether he would have reached a different conclusion had he sought to construe the expression "exceptional circumstances" in the context of Article 8 rather than by separately considering the two matters as in fact he did it is impossible to say. What is clear is that the advent of Article 8 did not in this case produce any different outcome to that in the preponderance of pre-HRA authorities, namely an order for sale with a modest stay.

[14] On the other hand the decision of Girvan J in *In the Matter of Herbert Kerr* GIRF3723 delivered on 11 June 2002 points in the opposite direction. In that case the bankrupt husband was adjudicated on 18 August 1989 but remained living in the matrimonial home the subject of the proceedings with his wife, who was as in the present cases the second respondent. As also in the present applications, the applicant waited for almost twelve years before seeking an order for possession. The question of Article 6 and the delay in bringing proceedings was raised before Girvan J. In the result he decided the case on a different basis (which later through no fault of the judge proved to be erroneous) but he commented in passing upon the Human Rights Act submission as follows:

> "The Convention rights of the debtor under Article 6 give added emphasis to the requirement the decisions affecting his property rights should be taken expeditiously. Were it necessary to decide the matter I would have little hesitation in coming to the conclusion that in the circumstances of this case the trustee in bankruptcy did not act within a reasonable time in deciding whether to take the property."

[15] There is too a decision of Evans-Lombe J. in *Holtham v Kelmanson* [2006] EWHC 2588 (Ch) in which a bankruptcy order was made against Mr Holtham in June 1995. The bankrupt owned a dwelling house in which he continued to reside and in respect of which he continued to discharge the mortgage payments. At the time of his bankruptcy there was no equity in the house but with rising house prices that position changed over time and, accordingly, in March 2005 the trustee sought an order for sale for the benefit of the creditors. It was contended on behalf of the former bankrupt (who had by then received an automatic discharge) that Articles 6 and 8 of the Convention provided a good defence to the claim. No persons other than Mr Holtham appear to have had any interest in the property so that the focus of the attack was Article 6. The Judge dealt with that aspect by saying that:

> "[the Official Receiver and Trustee] cannot be criticised for delaying taking steps on a rising property market when the result of doing so has been that the creditors may receive payment in full of their debts or something very near it. The trustee in bankruptcy's primary duty is to the creditors. Had the Official Receiver taken steps to remove Mr Holtham when the property was subject to negative equity there would, no doubt, have been complaints by Mr Holtham that to do so was oppressive without achieving anything for the creditors. All of this illustrates that Mr Holtham's complaints are far removed from Article 6(1)."

Thus in that case, which is comparable as to the period of delay in moving for possession and sale to that in the present applications, the Judge held that the delay was justified by a desire to wait until the tide of rising property prices lifted the vessel off the sand bank of negative equity and floated it sufficiently to satisfy the creditors.

[16] Finally by way of example, In *Barca v Mears* [2005] BPIR 15, Deputy Judge Strauss Q.C. commented that the pre - HRA case law may possibly have had an "undue bias" in favour of the creditor's property interests and after a review of some interesting academic writing on the subject observed at para. 42 that :

> "Thus it may be that, on a reconsideration of the sections in the light of the Convention, they are to be regarded as recognising that, in the general run of cases, the creditor's interests will outweigh all other interests, but leaving it open to a court to find that, on a proper consideration of the facts of a particular case, it is one of the exceptional cases in which this proposition is not true. So interpreted, and without the possibly undue bias in favour of the creditors' property interests embodied in the pre–1998 case law, these sections would be compatible with the Convention."

However in that case, although the Deputy Judge doubted whether "the narrow approach as to what may be "exceptional circumstances" adopted in *Re Citro* is consistent with the Convention," he ultimately concluded that Mr Barca's circumstances (which were far removed on the merits from those of the present respondents) did not outweigh the rights of the creditors, "even on a more generous interpretation of the statutory provisions."

[17] It is therefore right to say that it is not at all easy to find examples of co-owners or occupiers who have in the final result benefited from the influence of the Act, the general tendency of courts apparently being to declare that the Act dictates a more generous approach to the finding of "exceptional circumstances" before proceeding to hold that, even by that more relaxed yardstick, the interests of the creditors should nonetheless prevail just as they almost always did before the Act.

Consideration and Decision

[18] The Rooneys and the Paulsons were each left undisturbed in their homes for almost twelve years. During that time the bankrupts' spouses as joint owners raised the money needed to keep up the mortgage payments, and they maintained and improved the properties, in the case of the Paulsons to a very considerable extent and at very considerable expense and in these ways provided the opportunity for the properties to avail of the rise in house prices. Had they simply walked away from the houses at the time of the adjudications in 1990 and started life again elsewhere there would have been nothing for the creditors to realise then, now or in the future nor it is clear would any attempt at realisation have been made by the applicant at that time in view of the negative or neutral equity valuations then prevailing. The wives being then twelve years younger might have bought new homes in their own names or obtained the tenancies of alternative suitable public or private housing. Instead they chose not to walk away; in the case of the Rooneys, on the faith of an implicit indication in the applicant's letter of December 1995 that they would be left undisturbed unless and until the Rooneys might wish to sell the property at some time in the future and, in the case of the Paulsons, because the applicant never indicated to them any intention that he might at some time in the future seek to recover possession of the house for the purposes of sale. Indeed, it is clear that he had actually decided not to do so because he expressly told the solicitors to the building society so in his letter to them of August 1993. Neither in the case of the Rooneys nor that of the Paulsons did the applicant ever indicate that he had changed or even might change his mind until his sudden *volte- face* following his review in or about 2002.

[19] In my view the dispossession of the Paulsons and the Rooneys at their time in life after all that has been done by them to preserve and enhance these properties and their values during the applicant's inactivity of almost twelve years would be a quite disproportionate interference with the Article 8 rights of the wives as co-owners and, in the case of Ms Paulson, the disabled daughter of Mr and Mrs Paulson, for whom the house has been especially and expensively extended and adapted at Mrs Paulson's expense and by the voluntary labour of her brother, to her specific needs. I also consider, in respectful agreement with the view of Girvan J in *In the Matter of Herbert Kerr*

that, in breach of Article 6, a delay of almost twelve years is outside the parameters of a reasonable time for deciding whether to take these properties. In reaching that conclusion I bear closely in mind the decision of Evans-Lombe J in *Holtham v Kelmanson* to the effect that it was reasonable for the trustee to wait for a lift from the incoming tide. I respectfully disagree with that conclusion as it does not seem to me in any real sense to balance the interests of the creditors with the Article 6 obligations. In addition there was in that case no non-bankrupt co-owner or family member whose rights required consideration under Article 8 and the case is therefore distinguishable in that respect. From a reading of the (chiefly) English decisions it is difficult to escape the conclusion that little more than a nod has been accorded to the effect of the Act upon the meaning of "exceptional circumstances". It does not seem to me consonant with the principles of Articles 6 or 8 that the applicant should be able to wait almost indefinitely to decide that he would like to obtain an order for sale and fail to tell the occupiers that that was his intention (if indeed it was at any time before 2002) so that as a result they decided to live on in their homes, discharge their mortgage obligations and outgoings, maintain and improve them and thus by their good husbandry unwittingly act, (if the applicant were to succeed in these applications) to their irredeemable prejudice.

[20] I am further fortified in that conclusion by the knowledge that in respect of all bankruptcies in England since 1 April 2004 and in this jurisdiction since 27 March 2006 the trustees ordinarily have three years from the date of the bankruptcy order to realise the interest of the bankrupt in his principal residence or the residence of his or her spouse or former spouse. Where the bankruptcies pre-dated those commencement dates, under the transitional arrangements trustees in each jurisdiction have three years from the respective commencement dates to move to realise such property. Moreover, where those interests have not been dealt with by the trustee within those time constraints the property will re - vest in the bankrupt or former bankrupt. It seems to me that this period must be indicative of Parliament's view formed since the commencement of the Act and informed by its provisions as to what term is reasonable to enable the trustee to decide whether to move to sell the property regardless of the state of the market and therefore a useful yardstick of Parliament's view of the longest period appropriate to allow in order to secure compliance with the requirements of Article 6. The periods of almost 12 years in the present cases are plainly well outside this limit.

[21] For the above reasons I have concluded that, following the Act, the circumstances of these cases are exceptional and therefore there is "good reason to the contrary" for not making the orders for sale sought by the applicant. The applications are accordingly refused.