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*Ex Tempore Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **18/05/2015**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION **13/45548/A01**

THE OFFICIAL RECEIVER

v

JULIE-ANN UREY

MR JUSTICE DEENY

[1] The court has before it today an appeal by Julie-Ann Urey from the decision of Master Kelly of 6 November 2014. The application before the learned Master which is now before me was brought by the Official Receiver for Northern Ireland who sought an order for sale in lieu of partition of premises at 2A Ballydoonan Road, Greyabbey, Co Down, Folio 64263 of Co Down. The Master made that order.

[2] I have had before me today helpful and learned submissions, both written and oral, from Mr Keith Gibson of counsel for the appellant/respondent, Julie-Ann Urey, and from Mr William Gowdy on behalf of the Official Receiver. Having had an opportunity to read the papers in advance and the benefit of the Master's judgment and their submissions I feel able to deliver an ex tempore judgment in this matter although I accept there are legal points of interest with which I have to deal.

[3] The facts of the matter can be shortly outlined. Neil and Julie-Ann Urey were a married couple. They acquired this property as joint owners on or about 6 July 2001. Unhappily differences later arose between them and the wife proceeded to bring proceedings against her husband for divorce and obtained a decree nisi against him. Following the decree nisi she issued proceedings for ancillary relief and she pursued those. As discussed ex arguendo they sometimes do not move quickly because one party is suspected of not being candid in his disclosure and, in any event, relations are obviously bad between the two parties.

[4] Therefore, in this particular case and this date is of great importance, the hearing for the parties before Master Redpath sitting as the Family Master on matters of ancillary relief and property adjustment only took place on 17 December 2012. After some further discussions and some encouragement from the learned Master the parties reached an agreement that was made an order of the court, that is a property adjustment order pursuant to the Matrimonial Causes (Northern Ireland) Order 1978 and the particular provision that is relevant is Article 26 and at Article 26(1) one finds the following:

> "On granting a decree of divorce, a decree of nullity of marriage or a degree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say –
>
> (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child, such property as may be so specified, being property to which the first mentioned party is entitled either in possession or reversion."

[5] This is what happened on 17 December. The parties agreed that Mr Urey would transfer his half interest in the property at 2A Ballydoonan Road, Greyabbey, to Mrs Urey and in return she gave up any claim on his business. He was a self-employed fisherman. The matter is before me today because Mr Neil Urey's business affairs had not run smoothly and he had sought to enter into an Individual Voluntary Arrangement but this had failed and on 15 November 2012 the supervisor of that IVA, a Mr Gareth Neill, petitioned for Neil Urey's bankruptcy and he pursued that matter expeditiously and on 19 December 2012 an order of the court was made by the Bankruptcy Master adjudging Neil Urey, of a different address in County Down, bankrupt.

[6] It can be seen that that is only two days after the property adjustment order of Master Redpath. The order of the court on that occasion in those proceedings numbered 2012/127647 has an important notice to bankrupts which I shall quote:

> "The Official Receiver is by virtue of this order receiver and manager of the bankrupt's estate. You are required to attend upon the Official Receiver at Fermanagh House, Ormeau Avenue, Belfast, immediately after you have received this order."

That is the legal effect of the bankruptcy order.

[7] The position is that on 10 January 2013 the Official Receiver became the trustee in bankruptcy of Neil Urey and at that point the property of Neil Urey vested in the trustee in bankruptcy and that follows on from Article 279 of the Insolvency (Northern Ireland) Order 1989. I shall quote from Article 279.

> "(1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the Official Receiver, on his becoming trustee.
>
> (2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this article or under any other provision of this part) it shall so vest without any conveyance, assignment or transfer."

[8] So by operation of law the legal and equitable title of Mr Neil Urey to the property at 2A Ballydoonan Road, was vested in his trustee in bankruptcy, the Official Receiver, from 10 January 2013.

[9] The position therefore that arises is that on foot of that the Master granted an order for sale and she found that the property adjustment order had not transferred the legal interest or the equitable interest to Mrs Urey. Counsel for the appellant/respondent before me accepted that the equitable interest was not transferred at that time. (There was never a dispute about the legal title). On one view that really ends the matter because I think a different argument had been advanced before the learned Master but Mr Gibson sought to construct an argument based on the provision of the Matrimonial Causes Order of particular relevance here. It is most important for the parties that this statutory provision exists and it is to be found at Article 26(3) of the Matrimonial Causes Order:

> "Without prejudice to the power to give a direction under Article 32 for the settlement of an instrument by conveyancing counsel, where an order is made under this Article on or after granting a decree or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute."

[10] On the submissions of Mr Gowdy that is a straightforward matter. It is common case that there was no decree absolute in this case ending the marriage between Neil Urey and Julie-Ann Urey until 25 June 2013. Therefore, counsel for the Official Receiver submits that the settlement between the parties of 17 December and the order of the learned Master on consent did not take effect and that is an end of the matter. Counsel for the appellant/respondent did not seek to argue that the effect of the decree absolute was somehow to revive the interest. Article 26(3) does say 'unless the decree has been made absolute'. I think that was wise on his part. I

think that would have been a difficult argument to construct. At the date of the decree absolute either any interest had passed from Mr Urey to Mrs Urey or it has passed to the Trustee in Bankruptcy on foot of the vesting of his property in that individual on 10 January 2013. As was submitted at that point the maxim *nemo dat quod non habet* applied and there was nothing for Mr Urey to give.

[11] Mr Gibson did seek to draw attention to and to draw comfort from the words in the clause which I have just quoted. He pointed out that Article 26(3) says that neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute. He says that that must mean that it has some effect until then, that the Order does not say shall be of no effect until and unless the decree has been made absolute. Perhaps more broadly he also argues that there must be some effect from something as important as a property adjustment order made by a Master in the High Court. I think he is right in that but one has to analyse what the effect of that is. I think I owe it to those who attempted to teach me Roman law at Trinity College, Dublin at the age of 18 to mention an aspect of Roman law which remains current in our own legal history. The distinction between the *Jus Personarum* and the *Jus Rerum* is one which Sir Henry Maine in his Ancient Law, 1930 edition, page 2H1 says:

> "is entirely artificial but extremely convenient."

[12] I think we have an illustration of that convenience here. I think Julie-Ann Urey on 17 December 2012 obtained a right *in personam* against Neil Urey. She did not obtain a right *in rem* over the property at 2A Ballydoonan Road, Greyabbey. She obtained a cause of action against him; it was a form of contract. He had agreed that she should have the whole of the family home. He could not resile from that afterwards, particularly because that agreement was made an order of the court, subject to the exceptional circumstances in which such an order might be re-opened by the family court at a future date. That is what she obtained on that occasion. But unless and until she then proceeded to get the decree absolute, unfortunately for her, she had no equitable or legal interest in the property itself, save as to her own co-ownership of it. Her right was against her husband, insofar he was still technically her husband as no decree absolute had been made at that time.

[13] In reaching that conclusion I consider that I am at one with the decision of the Court of Appeal in England in Mountney v Treharne [2002] EWCA Civ 1174 per Jonathan Parker LJ at paragraph 76 which summarises the point:

> "In my judgment, therefore, applying Maclurcan's case, the order in the instant case had the effect of conferring on Mrs Mountney an equitable interest in the property at the moment when the order took effect (i.e. on the making of the decree absolute). On that basis Mrs Mountney is, if anything, in a better position than a purchaser of their property under especially enforceable contract in that (as

> Mr Morgan has submitted) by making the order under Section 24(1)(a) the court has in effect already made a degree of specific performance in her favour. All that remains is for her to enforce it."

[14] Mr Gibson sought to draw some comfort from those latter remarks but it seems to me they do not alter the legal position that she had to have obtained a decree absolute before the property of Neil Urey was vested in the Trustee in Bankruptcy i.e. by 9 January 2013. The evidence is not before me as to whether it was possible to do that between 17 December and 9 January. It is not for me to rule on that point in any event. I think however, in fairness to Julie-Ann Urey, I should draw attention to the agreement she entered into which was made an order of the court and which is to be found in the papers before me. I note that the concluding clauses of that agreement of 17 December are as follows:

"Both parties agree that they will execute any document, deed, or instrument or release required of them to give effect to the terms of this agreement. This agreement is immediately binding upon the parties and shall be made an order and consent forthwith.
No Order to cost as between the Parties.
The decree absolute shall be extracted forthwith.
Liberty to apply.
Dated 17 December 2012" and it is signed by the petitioner and witnessed by his solicitor and signed by Mrs Urey and witnessed by her solicitor. (My underlining)

So it was agreed that the decree absolute should be extracted forthwith and that is something that Mrs Urey and her solicitors will have to reflect upon.

[15] In coming to this decision I consider that I am not in any way departing from my own earlier decision in The Official Receiver v Gallagher [2014] NICh 6. In that case I was dealing with an application under Article 257 of the Insolvency (NI) Order 1989 to set aside a purported disposition on foot of a matrimonial agreement made the order of the court in that case. I will just comment briefly on why there was no conflict between that decision and this decision. Firstly, in that decision Master Redpath was seized of the bankruptcy petition as well as the application for ancillary relief and they were both before him on the same day and, indeed, the petitioning creditor, Her Majesty's Revenue Commissioners, were represented before him on the occasion of his order on that date. Furthermore, the agreement which he made an order of the court, as I recite at paragraph 6 of my judgment in Gallagher, expressly provided for the payment of £21,500 for the husband to discharge the statutory demand on which the petition was based.

[16] The facts therefore are quite different in that case. The point that is taken here by counsel for the Official Receiver was not taken by counsel for the Official Receiver in that case. Furthermore, the decision I now make is also in accord with the

decision of Mr Justice Horner in Falconer Stewart, Accountants (a firm) v Patterson & Donnelly, Solicitors (a firm) [2014] NIQB 103 at paragraph 6.

[17] In the circumstances therefore I find that there was no disposition of property because the property vested in the Official Receiver as Trustee in Bankruptcy before the decree absolute which then was ineffective to alter the legal relations between the parties. I accept the submission that that vesting of Neil Urey's property in the Trustee in Bankruptcy was on 10 January 2013 and not 19 December 2012 which may be of importance to Julie-Ann Urey going forward.

[18] This is not an appropriate case to consider Article 257 of the Insolvency Order because there was no disposition. If I had to consider that there would be evidence that it was a disposition at an under value but that is not a matter on which I need or wish to express any further view, although again that might be relevant going forward.

[19] The Order of the learned Master of 5 November 2014 is upheld and the appeal is dismissed.