Neutral Citation: [2014] IEHC 673

THE HIGH COURT

FAMILY LAW

[2008 No. 52M]

IN THE MATTER OF THE JUDICIAL SEPARATION FAMILY LAW REFORM ACT 1989, AND IN THE MATTER OF THE FAMILY LAW ACT 1995,

BETWEEN

H.

APPLICANT

AND

H.

RESPONDENT

AND

F.I.

NOTICE PARTY

JUDGMENT of Mr. Justice Henry Abbott delivered on the 19th day of December, 2014

1. This judgment relates to the determination of issues arising from the points of claim of the notice party (which shall hereinafter be referred to as the financial institution) against the applicant and the respondent. The applicant and the respondent were married to each other in 1980. The applicant sought judicial separation against the respondent and in a written judgment delivered on 17th November, 2009, Sheehan J. decided that an order for judicial separation was to be made, subject to provision by way of ancillary relief pursuant to s. 16(2)(a) to (l) as set out in the said judgment. Sheehan J. indicated that he would discuss with counsel the form which the various orders should take but unfortunately Sheehan J. became ill and it was necessary for this Court to proceed to make the orders. The order of the court was made on 29th April, 2010, and perfected on 24th May, 2010.

2. The respondent appealed this order to the Supreme Court claiming that the order as drawn up by the High Court did not fully embody the decisions of Sheehan J.'s judgment and was inconsistent therewith. In the judgment of Murray J. on behalf of the Supreme Court delivered on 11th July, 2012, the issue was identified as follows:-

> "The essential point made on behalf of the appellant, Mr. H., in his submissions today, is that the order of Mr. Justice Abbott is erroneous because it did not contain an express provision providing that in giving effect to the judgment and consequential order, nothing should be done which would put at risk Mr. H's ability to discharge all his debts. Counsel for Mr. H., we are told, asked Mr. Justice Abbott to insert such an express provision in the order of the High Court to that effect, since a statement to that effect was made in the judgment of Sheehan J.."

3. The Supreme Court rejected the respondent's appeal and it is instructive to note the analysis of the judgment of Murray J. on p. 4 thereof as follows:-

> "The second matter which I would like to note, in particular, is that the order of Mr. Justice Abbott makes express reference to the judgment of Mr. Justice Sheehan in a vital part of that order, and indeed in the section of that part of the order with which the appellant takes issue, namely para. 2(iv). I think it is relevant to quote from that paragraph:-
>
> > 'The court directs that the liability of the parties as set out in the schedule hereto shall be discharged from the proceeds of sale of the properties set out at paras. 1(i) and 1(ii)(a) – (h).'
>
> Then the order of Mr. Justice Abbott states:-
>
> > 'Upon the sale of each property, in default of agreement between the parties, an application shall be made to the court for directions as to how the net proceeds of such sale are to be distributed between the applicant and the respondent and/or used for the repayment of part of the debts set out at schedule hereto, having regard to the judgment of Mr. Justice Sheehan of the 17th day of November, 2009.'"
>
> The order then goes on to define the meaning of the net proceeds for the purpose of the order. First of all with regard to that, in my view, the order of Mr. Justice Abbott allows sufficient discretion to the court to give effect to Mr. Justice Sheehan's judgment in the event of a disagreement as to the matter in which the proceeds of sale can be dealt with, namely, that part of the judgment in which Mr. Justice Sheehan either said or implied that the respondent's ability to discharge all of his debt should not be put at risk that provision quoted above from Mr. Justice Abbott's orders caters for that, and indeed it is not in issue that his order should be interpreted in that way."

4. It is noteworthy that the High Court refused a stay on the order of 29th April, 2010, pending said appeal to the Supreme Court, and by order dated 30th July, 2010, the Supreme Court ordered that a stay on the order of 29th April, 2010, be granted pending the determination of the appeal conditional upon:-

> (1) the proceeds of the sale of any of the properties being lodged to a joint account of the solicitor for the applicant and

the solicitor for the respondent, and

(2) on receipt of the proceeds of the French property that €30,000 be paid out to the applicant and to the respondent respectively and the balance of €2,000,000 be lodged to the said joint account.

It was thus clear that, notwithstanding the fact that the Supreme Court were awaiting the hearing of the substantive appeal, that the parties were entitled to have the order of 29th April, 2010, executed by the sale of the properties, subject to the lodgement of proceeds as directed by the Supreme Court. This process of execution was driven primarily by the applicant and it was punctuated by many applications to this Court in respect of the sale of the family home and the French property and in addition to the preparations for the sale of other properties. In addition to a number of further Supreme Court appeals made by the respondent, practically all of these applications and appeals arising therefrom were characterised by an obstructive and uncooperative approach to the steps being taken by the respondent I do not propose to examine in detail the basis for this conclusion, but suffice it at this stage to draw attention to the comments of Murray J. at p. 2 of the judgment of the Supreme Court of 11th July, 2012, relating to the first appeal objecting to the terms of the order of 29th April, 2010, as follows:-

> "With that level of agreement and a judgment in the terms referred to, it is remarkable that this case has involved so many applications to the High Court and it would appear, continuing litigation to significant cost individually to each of the parties, and indeed a dissipation of the value of the properties concerned with the passage of time. The courts unfortunately have no direct control over that, although on some occasions a judge may have an opportunity to review the steps taken by the various parties individually and make a determination as to whether somebody should bear full or large responsibility for a lot of the litigation that has gone on in circumstances where one might have expected that it was in the interest of both parties to get on with selling the property under the terms of the original judgment of Mr. Justice Sheehan and indeed, the order of Mr. Justice Abbott."

Sale of the Properties

5. There had been six properties of the parties in a provincial location, together with a family home in Dublin and a property in France (the French property). The judgment of Sheehan J. noted that the applicant's valuer placed a value of approximately €5,500,000 on the six provincial properties (as regards the respondent's interests therein), and €1,500,000 on the family home. The judgment also noted that the parties appeared to agree that the French property was worth not less than €2,000,000. With the constant lack of cooperation from the respondent necessitating numerous court applications, agents were appointed to sell the family home, the French property and the more immediately saleable properties among the six provincial properties. This ultimately resulted in the sale of the family home for little more than half the estimated value and of the French property for a sum in the region of the estimated value of €2,000,000. The net proceeds from the family home were €700,271.71, and the net proceeds of the French property were €1,801,784.96. These sums were deposited in an independent bank and from that deposit was paid the total sum of €260,000. to the parties in equal shares pursuant to the order of the Supreme Court dated 30th July, 2010, and several orders of the High Court. It should be noted that the mortgage on the family home was discharged to the financial institution from the proceeds of sale, and the financial institution consented to the closure of the sale of the family home, notwithstanding that the mortgage which the financial institution held on the family home was an "all sums due", in respect of the substantial indebtedness of the parties described in the judgment of Sheehan J. The court directed that the net proceeds be paid into court "without prejudice" to the contested "all sums due" clauses in the mortgage.

6. The total fund standing on deposit abiding the further orders of this Court in regard to disbursement to applicant/respondent and financial institution and other creditors stood at €2,577,221.30 as at 4th September, 2013. At this juncture there was a very substantial degree of disagreement between the applicant and the respondent in relation to the order and priority of payment of the substantial sum on deposit. The applicant argued that a substantial part thereof be paid to her, free of any indebtedness, to cater for her accommodation needs and living expenses. The respondent argued that the indebtedness of the financial institution be reduced so as to stop interest running and that the parties await the sale of other properties. The respondent also argued that the French property had been sold at an undervalue and had taken steps to seek to have the applicant join him in proceedings in France to claim the loss to the parties through mis-sale. An application in that regard to this Court by the respondent was refused, but it appears that there may still be an appeal outstanding in the Supreme Court relating to such refusal. There is no stay pending appeal in respect of such refusal (the same having been refused by this Court, and on appeal by the Supreme Court). The stand off between applicant and respondent was exacerbated by reason of the fact that the financial institution claimed an equitable charge to the proceeds of the French property, and the "all sums due" in respect of the net proceeds of the family home.

7. In an effort to resolve the impasse the applicant applied to the High Court to have the financial institution joined as a notice party, and by 22nd February, 2013, the financial institution had been joined as a notice party for the limited purpose of determining the respective entitlements of the parties, and the financial institution to certain assets, securities and monies held in the name of the parties and/or the solicitors. The order directing the points of claim would be delivered by the financial institution and that the applicant and respondent would reply thereto.

Points of Claim of the Financial institution

8. The points of claim of the financial institution may be summarised as follows:-

(1) Point 3 claims that the written application dated 28th January, 2004, a mortgage on the family home, contained an express term that "the (financial institution's) standard mortgage document will be used and the mortgage will be as security for your house loan(s) and in addition for all your present and future liabilities to the bank howsoever incurred". – this refers to the "all sums due clause".

(2) Point 4 claims that the financial institution advanced the sum of €166,000 to the applicant and respondent, and that special condition 4(a) confirmed that the agreement that the mortgage would secure both the home loan advance and all present and future liabilities of the applicant (being the applicant and the respondent) to the financial institution howsoever incurred.

(3) Point 5 sets out the terms of the mortgage and charge dated 15th November, 2000 as a continuing security to the financial institution for a discharge on demand of:-

> (i) all present and/or future indebtedness of the mortgagor to the financial institution on any current and/or other account with interest and bank charges.

(ii) all other liabilities whatsoever of the mortgagor to the financial institution present and/or contingent, and

(iii) all costs, charges and expenses howsoever incurred by the financial institution in relation to the mortgage and such indebtedness and/or liabilities on a full indemnity basis.

(4) In Point 7, the financial institution states that in or about 24th February, 2004, the financial institution made a loan offer to the respondent in the sum of €2,000,000 in relation to the proposed purchase of the French property which was referred to as a holiday home. The loan offer was signed by the respondent on 30th September, 2004. It was claimed that at all times it was an express or term of said loan that the property would be purchased in the name of the respondent and that the funds provided by the financial institution would be utilised in the said purchase. It was further agreed that in the event of a sale the underlying loan to the financial institution would be discharged from the net proceeds of sale.

(5) In Point 8, it is claimed that the financial institution is a stranger to the purchase of the French property, but it has since been asserted on behalf of the applicant and the respondent that the property was purchased in joint names. No monies were provided by the applicant in relation to the foresaid property.

(6) Point 10 claims that the family, home sold in or about February, 2012, has produced a net figure of €700,271.71 and that these net proceeds are held to discharge indebtedness in accordance with the deed of mortgage of 15th February, 2000, on an "all sums" basis.

(7) Point 11 claims that in December, 2010 the French property was sold and a balance representing the net proceeds (unascertained by the financial institution) are held in an account in the names of the solicitors for the applicant and respondent pending further order, subject to certain payments out of same ordered by the court.

(8) Point 14 sets out the principal amounts due on foot of the loan account at €2,688,546.67, and to a principal amount in foot of the current account €4,249.27 totalling €2,692,795.94.

(9) Point 15 claims that the said sums are secured on the family home and consequently, on the family home net proceeds by virtue of the mortgage of 15th November, 2000.

(10) Point 16 is instructive insofar as it sets up the basis for the differences between the applicant and the respondent in these proceedings. Point 16 states:-

"Furthermore, the notice party claims entitlement in contract or by way of equitable mortgage, equitable tracing or by following remedies over the French property net proceed and will rely on the following:-

(i) as against the respondent the monies are payable to the notice party as a simple contract debt;

(ii) by virtue of the loan agreement the monies were advanced specifically towards the purchase of the French property;

(iii) at all times it was represented that, in the event of a sale, the loan would be repaid from the proceeds of sale;

(iv) the applicant and the respondent could not have purchased the French property without the monies provided by the notice party;

(v) the notice party has a purchase money security interest and/or an equitable mortgage over the French property and the French property net proceeds;

(vi) at all times it was represented that the French property was being purchased by the respondent. If it was purchased in joint names, which is not admitted, the notice party is a stranger to the basis on which it was purchased in joint names;

(vii) no monies were advanced by the applicant towards the purchase and in the circumstances, whatever the legal title, the applicant has no beneficial interest in the property;

(viii) Further or in the alternative, if the applicant asserts title to the French property then, in equity she must accept liability for the borrowings utilised to permit herself and the respondent to purchase that asset;

(ix) in the premises the notice party has an equitable mortgage or a claim over the French property proceeds;

(x) further or in the alternative, the court should permit equitable tracing of the notice party's loan advance into the French property and thence into the French property net proceeds;

(xi) as the respondent was at all times liable to repay the debt to the notice party, the equity in the French property, up to the value of the notice party's loan advance and interest, did not form part of the joint assets available for distribution in the family law proceedings;

(xii) further or in the alternative, the court should prefer the claim of the notice party to the French property net proceeds by reason of the matters aforesaid."

(11) In Point 17, it is claimed that the financial institution holds security over certain other assets held by the respondent, but as the date of points of claim, no attempt appears to have been made by the applicant or the respondent to realise those assets. (These are some of the provincial assets).

9. The final claims of the financial institution are set out as follows in summary form:-

"1. Judgment against the respondent in the sum of €2,692,795.94 as set out above.

2. A declaration that the French net proceeds are held by the applicant and the respondent on trust for the notice party or are charged by virtue of an equitable charge or security in favour of the notice party.

3. A declaration that the whole of the beneficial ownership of the French property was held by the applicant and the respondent on trust for the notice party.

4. A declaration that the notice party has a purchase money security interest, equitable mortgage or entitlement in equity to the French property net proceeds up to the amount of the advance made by the notice party for the purchase of that asset.

5. An order directing payment of the French property net proceeds to the notice party in reduction of liabilities owed to the notice party.

6. A declaration that pursuant to the mortgage dated 15th November, 2000, all present and/or future indebtedness of the applicant and respondent as mortgagor both joint and several is due to the notice party on foot of the said mortgage and is charged upon the family home and the family home net proceeds.

7. A declaration that the family home net proceeds are held by the applicant and the respondent on trust for the notice party.

8. An order directing payment of the family home net proceeds to the notice party in reduction of the liabilities owed to the notice party.

9. An order appointing M.L. solicitor as receiver by way of equitable execution over the French net proceeds and the family home net proceeds.

10. If necessary, relief by way of equitable tracing or following remedies over the French net proceeds.

11. All necessary accounts and inquiries.

12. Interest pursuant to contract and/or Courts Act 1981, on all sums due.

13. Further or other relief.

14. Costs."

10. In the applicant's points of defence delivered on 20th June, 2013, she formally denies the mortgage documentation or the efficacy thereof, and in Points 3 and 4 claims that her claims within the family law proceedings are in priority to any claims of the financial institution, if valid. Further, it is claimed in Point 4 that her claims under the family law proceedings are under the above entitled family law legislation and under the Constitution and hence, take precedence to any claims by the financial institution. She claimed that insofar as any further advances were made over and above the mortgage for the family home were made, that she was a stranger to same and that insofar as the French property was concerned, it was put into the joint names of the parties and she will say that the respondent advanced 50% in the property to her, and that she will rely on the doctrine of the presumption of advancement. She stated that she was not a party to any loan agreement in relation to the French property. In Point 15, the applicant denies the claim of the financial institution at para. 17 that no effort was made to sell the other properties, apart from the family home and the French property. In relation to such claims she accepted, however, that the respondent has failed and refused to realise certain other assets in defiance of the judgment and orders of the High Court and will continue to do so unless compelled by the court. It was necessary to seek to compel the respondent to act or dispense with his consent in various aspects of the sales of the two properties referred to herein due to his refusal to cooperate. The applicant refers to the many applications and motions before the High Court and the Supreme Court in this regard. In Point 16, the applicant states:-

> "In the context of the these within proceedings, previous judgments and orders of this Honourable Court (affirmed by the Supreme Court), the applicant will seek that her entitlements under the previous judgment and orders of this Honourable Court would be satisfied from the said liquid sums pending the resolution of the within proceedings and the respondent would continue to hold certain other properties free from any other claim by her."

This, she believes, will doubtless make the sale of those assets more likely when the respondent is solely benefiting from same. She concludes in Point 17 claiming that the relief claimed in the financial institution's claims are paras. 1 – 15 are excessive and are, in any event, subject to the within proceedings, the judgment and orders of the High Court and the prior claims of the applicant herein.

11. The respondent put the financial institution on full proof of the matters alleged in its points of claim relating to the affect and documentation relating to the deed of mortgage and charge of 15th November, 2000, for the purpose of advancing money on the family home, and as an "all sums due" mortgage. He admitted that the financial institution made a loan offer to the respondent on 24th February, 2004, for the purchase of the French property, but denied that it was an express or implied term of the said loan that the French property would be purchased in the name of the respondent or that in the event of a sale, the underlying loan from the financial institution would be discharged from the net proceeds of sale. He admitted that no monies were provided by the applicant for the purchase of the French property. He admitted to the sale and deposit of net proceeds in relation to the family home. In Point 6, the respondent does not admit the claims of the financial institution to the net proceeds of sale under the "all sums due" mortgage documentation.

12. In relation to the respondent's denial that the "all sums" due clause relates to the net proceeds of the family home, he claims in Point 8:-

> "The respondent admits that the monies mentioned in para. 14 of the financial institution points of claim are sums due and owing to the financial institution save the interest claimed in respect of a sum equal to the difference between the net sale proceeds of the former family home of the applicant and the respondent (hereinafter referred to as "family home") and the balance of the mortgage thereon."

As an alternative he states in Point 9 as follows:-

"Without prejudice to anything hereinbefore or hereinafter pleaded, if which is not admitted the family home was demised by the applicant and the respondent to the financial institution as continuing security to the financial institution for the discharge on demand of *inter alia* all present and/or future indebtedness of the applicant and the respondent to the financial institution on any current and/or other account with interest and bank charges by reason of the decision of the financial institution to vacate the mortgage of the family home in or about the month of December, 2011 without requiring the whole of the net proceeds of sale thereof to be paid to it in part discharge of the indebtedness of the respondent which decision was made by the financial institution without consultation with or agreement of the respondent, the financial institution is estopped from claiming, or is not entitled to claim, interest on that part of the principal monies due to it equal to the difference between the net proceeds of sale of the family home and the balance due on the mortgage thereon from the date on which the net proceeds of sale were available to be paid to the financial institution."

The respondent claims that it was an express or in applied term of the loan agreement for €2,000,000, referred to at para. 7 of the points of claim, that the monies advanced in foot thereof would be secured on the properties held by the respondent as 12 acres of land situated at T.R., and on the L. premises and on commercial property at No. 2. Street, but not on the French property and that pursuant to the said term, charges are registered on the said property securing the said monies and that "in the premises the notice party is not entitled to assert, or is estopped from claiming, an entitlement in equity, whether by way of equitable mortgage, equitable charge, equitable security, equitable tracing, trust or otherwise howsoever, to the monies held in trust for the benefit of the applicant and the respondent by their respective solicitors."

13. In Point 13, the respondent pleads that apart from the securities held by the financial institution over certain of the respondent's assets, it is not entitled to priority over the respondent's other creditors and the debts due and owing to the financial institution ought to be discharged *pari passu*, with the respondent's other debts. Point 14 pleads an alternative and without prejudice plea of *laches* in respect of any equitable relief. In Point 15, the respondent denies that the respondent made no attempt to realise the assets over which the financial institution hold security, and claims that the respondent will say that he has at all times cooperated fully with the financial institution in the matter of his indebtedness to it, and he particularly agreed with the financial institution restructuring of the indebtedness which included a provision for the orderly disposal of the said assets. He stated that on 28th October, 2011, the respondent applied to the High Court for approval of the proposed restructuring and for orders giving effect thereto, and that the said application was refused.

14. The respondent proceeded to reply to the points of defence delivered on behalf of the applicant in Points 17, 18 and 19 as follows. In Point 17 it was denied that the applicant had any outstanding substantive claims within the family law proceedings. Such claims as were made by the applicant were heard by the High Court (Sheehan J.) on 8th and 9th October, 2009, and determined by judgment delivered by the judge on 17th November, 2009. In Point 18, it is denied that the respondent failed or refused to realise certain assets and that the respondent had repeatedly called on the applicant to cooperate with the process of putting the said asset in a saleable condition, including but not limited to the carrying out of basic maintenance on the obtaining of public liability insurance and has indicated his willingness to appoint the applicant as agent in order that she might do so. The applicant has failed and refused to take any step whatsoever to advance the sales of the said assets on the condition of marketability and value thereof has been reduced by her failure and refusal in this regard. In Point 19 the respondent denies that the applicant has any immediate entitlement pursuant to the judgment given and the orders made herein to any part of the monies held on trust for the benefit of the applicant and the respondent by their respective solicitors. Rather, the respondent will say that on a true construction of the said judgment and orders the debts of the applicant and the respondent as set out in the order of this Honourable Court made on 29th April, 2010, are to be discharged first out of the net proceeds of sale of the several assets held by the respondent, and that the applicant's only entitlement under the said judgment and orders is to a half share of the monies remaining, if any.

Directions in the Proceedings

15. The High Court made further directions that the financial institution furnish details of the mortgage and charges referred to and the security documentation in connection therewith, together with all relevant bank accounts. Such documentation was produced and was available for the hearing of the issues between the financial institution and the applicant and the respondent. The hearing of the issues occurred over a number of days in 2014. Prior to the hearing, the solicitors for the financial institution delivered a letter to the solicitors for the applicant and the respondent, which was undated and headed "without prejudice save as to costs" which counsel for the financial institution claims was a Calderbank letter.

16. It is appropriate to set out in full the relevant parts of this undated letter of offer from the financial institution to the other parties:-

"Dear Sirs,

We refer to the above matter and confirm that we have taken our client's instructions in this matter in the light of the discussions we have had to date, the judgment of Sheehan J. and the subsequent orders of both Abbott J. and Sheehan J. Our client proposes the following settlement which it asserts is reasonable in all the circumstances:-

(i) The applicant to be paid €750,000 out of the funds currently standing to the credit of the action. The applicant to accept same in full and final settlement of these proceedings and any financial relief and subsequent divorce proceedings and all claims for costs and outlay. The applicant will apply to vacate any and all existing costs order in her favour. The applicant will be responsible for her own legal costs out of the said sum of €750,000. The applicant will accept that payment of the €750,000 represents "proper provision" for her in any divorce and that she will have no claim over any money or asset of the respondent (including but not limited to the properties identified at para. (iii)(a) and (b) below in priority to the financial institution.

(ii) The respondent to be entitled to be paid €127,000 out of the funds currently standing to the credit of the action. The respondent to also be entitled to the following:-

(a) the financial institution will release its equitable mortgage evidenced by facility letter and a solicitors undertaking over 2 A Street (a property with an indicative value of C€70,000).

(b) the financial institution will release its legal charge over the property being nine acres at L. industrial estate (a property with an indicative value of €250,000).

(c) the financial institution will have no claim over the interest of the respondent for the property at 5/6 A Street (a property with an indicative value of circa €150,000)

(d) the financial institution will have no claim over the shareholding and beneficial interest of the respondent in N.U. Limited which, in turn, owns property at (b) (a property of which a 75% interest is worth €75,000).

(e) the respondent consents to judgment in the summary summons proceedings in the amount of €2,783,386.61 (being the total balance due by the respondent to the financial institution as of close of business on 19th December, 2013) . there will be a stay on entry and execution of the said judgment for three months and thereafter, provided the respondent complies in full with the terms hereof the financial institution not seek to enter same or take any steps and with consent to the vacation of the said judgment.

(f) subject to the respondent warranting and carrying out in full the obligations at para. (iii)(a) and (b) below and para. (iv) below, the financial institution will accept the cash amount at para. (iii) below together with the security interest over and the whole of the sale proceeds of the properties identified at para. (iii)(a) and (b) below in full and final settlement of all claims against the respondent.

(g) the respondent confirms that he is in default of his loan obligations to the financial institution and the bank is entitled to forthwith seek possession of or appoint a receiver over the properties set out in paras (iii)(a) and (b) below and consents to any order for possession required by the financial institution and provide and execute all documentation to achieve same. The respondent will confirm any appointment of a receiver or the taking of possession, the properties at para (iii)(a) and (b) below can be marketed forthwith by the financial institution, and the financial institution may nominate the agent and the respondent will authorise the agent to deal solely with the financial institution, but the bank shall be free, at its sole discretion to sell the properties forthwith or to hold same for such period as it in its sole discretion believes appropriate. He will provide a letter through his solicitor to this effect.

(h) the respondent will apply to vacate any and all existing costs orders in his favour. The respondent will be responsible for his own legal costs out of the said sum of €127,000. The applicant will accept the payment of €127,000 together with the property assets set out above represents "proper provision" for him in any divorce and that he will have no claim over the assets or proceeds of the assets at para (iii) (a) – (b) below in priority to the financial institution. The indicative values places on these properties are based on drive by valuations are for guidance only and the indicative values shall not form part of these terms."

This cash and property assets offer is, in the financial institution's submission, reflective of the fact that the respondent is the primary debtor to the financial institution and is equitable given his reluctance to liquidate property assets in the past, which suggests that he wishes to retain some property assets. (The financial institution claimed in submissions that it had taken a reduction in its entitlements under this offer – "a hit" but the respondent has complained that this was never quantified) – my comment.

(iii) The financial institution is to be paid the balance of the funds currently standing to the credit of the action after payment of the sum of €750 under para (i) above, and €127,000 at para (ii) above. The respondent and the applicant (and their solicitors) confirm that this sum is not less than €1,600,000 but, for the avoidance of doubt any sum in excess of that figure at the date of the closure of the account will also be paid to the financial institution. In addition, the financial institution is also entitled to the following:-

(a) In relation to the 12 acres at P.R. contained in folio 11232 the respondent will confirm and warrant that (sister) has no interest in this property in priority to the financial institution first legal charge. The respondent and (sister) will consent to the vacation of the order made at para (1)(v) of the order of Mr. Justice Abbott dated 29th April, 2009, and which order was obtained without notice to the bank. The respondent to procure the written consent of (sister) together with a letter from an independent solicitor advising (sister) that this term is without prejudice to the fact that (sister's) interest is nowhere recorded on folio 11232 and the financial institution's first charge was created for value and without notice of any claim or interest of (sister).

(b) In relation to the 16b acres at T.R., the respondent confirms and warrants that he is the sole owner of this property and that same is unencumbered. The respondent confirms that he has a good marketable title thereto. The respondent will execute a deal of charge in the financial institution's standard form over the said property so that the financial institution claims a first legal charge and pending registration his solicitor will provide an undertaking in the financial institution standard form as to the respondent having a good marketable title and as to registration of a first legal charge. The respondent and (sister) will consent to the vacation of the order made at para (1)(iv) of the order of Mr. Justice Abbott dated 29th April, 2009, and which order was obtained without notice to the financial institution. The respondent to procure the written consent of (sister) together with a letter from an independent solicitor advising (sister).

(c) in the event that the respondent cooperates in full with the marketing of the above properties and the appointment of a receiver and/or the obtaining of an order for possession, then the bank will accept the cash amount at para (iii) together with the security interest over and the whole of the sale proceeds of the properties identified at para (iii)(a) and (b) below in full and final settlement of all claims against the respondent. Any failure by the respondent to cooperate in full will constitute a breach of this provision and the financial institution can proceed and execute against the respondent for the whole amount of its judgment (after giving credit for any sum actually obtained).

(iv) Upon receipt of written confirmation for both the respondent and the applicant and (sister) as per para (iii)(a) and (b) above and the provision of the solicitors undertaking at para (iii)(b) above, together with production of a signed and stamped deal of charge in relation to the property at para (iii)(b) above, these terms will become operative.

(v) Upon the terms becoming operative the matter will be adjourned for two months for implementation.

(vi) Upon the terms becoming operative the financial institution will be paid €1m out of the funds standing to the credit of the action. The applicant will be paid €300,000 out of the funds standing to the credit of the action and the respondent will be paid €100,000 out of the funds standing to the credit of the action.

(vii) Upon other matters being completed within two months (or for such further period as the parties shall agree in writing), the applicant will be paid €450,000 out of the funds standing to the credit of the action and the respondent will be paid €27,000 out of the funds standing to the credit of the action, and the financial institution will be paid the balance of the funds standing to the credit of the action.

(viii) Upon completion of all matters, the financial institution's summary summons proceedings against the respondent to be struck out with no order and the financial institution's plenary summons proceedings against the respondent to be struck out with no order. The issue within the family law proceedings involving the financial institution to be struck out with no order. It is a matter for the respondent and the applicant whether other relief is required between them in the family law proceedings and provide same is not incompatible with these terms, the financial institution has no involvement in that."

This offer shall remain open for acceptance (by the provision of all the confirmation required at para (iv) above for fourteen days from the date hereof.

In the event that this offer is not accepted within FOURTEEN DAYS then the financial institution, will, with reluctance, ask the court to set down a full hearing of the issue involving the financial institution within the three day time estimate referred to by Mr. Justice Abbott. In the event of any claim for costs at the conclusion of these proceedings, the financial institution reserves the right to rely on this letter as representing a reasonable proposal in all the circumstances, in relation to any application for its costs or in defence of any application for costs against the financial institution.

Yours truly

M.L."

16. As appears from the said claimed Calderbank letter, a plenary summons seeking declaratory relief in relation to the trust and security issues and the appointment of a receiver, together with a summary summons claiming the liquidated sums were issued by the financial institution for the purpose of avoidance of doubt in relation to the ability of the court to finalise matters arising from the issue between the financial institution and the other parties, and this approach was approved by the court.

Hearing of the issues.
17. At the outset of the hearing, counsel for the applicant referred to the so called Calderbank letter from the financial institution and informed the court that it had issued a special summons seeking divorce and, to facilitate finality, was accepting on behalf of the applicant the offer of €750,000 to be paid out of the funds standing to the credit of the action to the applicant on the basis that the applicant would make no further claim against the respondent and on the basis that the financial institution would have no further claim against the applicant and that there would be a nil provision divorce order made on a full and final basis insofar as same was possible. He clarified later that it would also be necessary for the financial institution to discontinue the plenary and summary proceedings against the applicant to facilitate the completeness of such offer and acceptance.

18. Counsel for the respondent disagreed with the entitlement of the financial institution and the applicant to arrive at such an agreement, but the court directed that the hearing would proceed on the basis that the issues between the financial institution and the respondent would be heard subject to the court hearing the submissions on behalf of the respondent in relation to whether it was appropriate to accept what appeared to be an openly notified settlement offer provisionally agreed between the financial institution and the applicant.

The evidence.
19. Mr. O'M, senior manager in the financial institution gave evidence on behalf of the financial institution, and referred to the offer documentation and mortgage in relation to the family home from which it is clear that the mortgage not only secured the sum advanced thereon but also secured future advances on the "all sums due" basis. He also gave evidence referring to the accounts and loan documentation in relation to the total amount in respect of which the respondent owed as a contract debt to the financial institution and of the details of the extent to which this indebtedness was secured as a charge on most of the provincial properties. He also referred to the folio in respect of which Sheehan J. stated in his judgment that the respondent's sister had a 25% interest and drew the attention of the court to the fact that the charge of the financial institution was registered prior to the registration of the sister, and hence the financial institution could claim priority in respect of the entire share of the lands and the folio over the sister. He produced a correspondence between the financial institution and the respondent in relation to the financing of the French property. This correspondence did not show that the financial institution was seeking a charge directly on the French property, but advanced the money on the basis of the security held on the Irish properties and on the basis that the loan on the French property would be repaid when the same was sold by the respondent. In cross examination he conceded that it was not the usual practice of the financial institution to seek security directly on foreign property such as the French property saying that while this procedure was possible the technical difficulties presenting left it undesirable, especially when the borrower was as credit worthy as the respondent then was, and had ample equity in Irish property to cover the liability. He was completely unaware that the respondent intended to purchase the property in the joint names of the respondent and the applicant, and it was not until recent times in this litigation that he became aware that they had been joint purchasers. He stated that all sums were due and owing by the respondent to the financial institution, and that it was entitled to judgment in respect of that sum as a simple contract debt and for the other relief as advised.

20. He was cross examined on behalf of the respondent in relation to whether the bank had any charge of an equitable nature in respect of the net proceeds of the French property, but he declined to comment, indicating that apart from the former claim of the financial institution, it was for the lawyers and the court to determine the legal aspects of same. He accepted that the respondent was (originally) a good customer of the bank, and that the placing of the French property in joint names was not regarded by the financial institution as a fraud against them although the financial institution was not aware of same. He said that there were good relations between the financial institution and the respondent and that these continued certainly up to the time when it was possible for the bank to propose a restructuring of the respondent's loans in a letter of 2011.

21. The respondent gave evidence in relation to his life history and how he and other members of his family built up a family business in the provincial location and accumulated the assets referred to in the judgment of Sheehan J. He also explained that this was the

background behind his sister having a 25% share in one of the properties described by Sheehan J. (which is now disputed in terms of priority by the financial institution). While admitting the loan documentation and the owed sums due element in the provisions of the offer documentation and charge mortgage and charge on the family home, he demurred on the entitlement of the financial institution to priority in relation to the net proceeds of the family home. He explained that his reasoning behind putting the French property in joint names of himself and the applicant was for tax efficiency and inheritance reasons. He stated that such a move was not for the purpose of denying any security for the bank, as they were quite satisfied with his proposals that they would be paid if the property was ever sold from the proceeds of the sale and that they had adequate security for the loan in the event in the Irish property having regard to the values of property at the time. He agreed that he had undertaken to apply the net proceeds of the French property when it was to be sold on the prompting of the financial institution. He stated that he did not regard the open offer (the so called Calderbank letter) of the financial institution as being fair to him insofar as the amount of cash available to him free to hand was not equal to that available under the offer to the applicant. He averred that at all times he co-operated with the sale of the property and execution of the judgment of Sheehan J. and order of the High Court. He had wanted the debts owing to the financial institution and other creditors discharged before any distribution or significant distribution to the parties, and, to show his good faith in that regard, he had negotiated a restructuring of his loans with the financial institutions but this had been rejected by the applicant and by the court in 2011. He stated that he was happy enough to proceed to implement the judgment of Sheehan J. but that there had been an "atmosphere change" after the judgment had been formalised into an order by Abbott J. He complained that the family home had been sold on a fire sale and for a low value, which was now the toast of his former neighbours, as they had used it as the lowest bench mark in the area for the purpose of determining values under the new residential property tax regime. Under cross examination he agreed that orders had to be obtained from the court in relation to the formal closing of the sale of the family home and the French property. When pressed in relation to his role in relation to the sale of any of the provincial properties, he asserted that as the sale was being processed by the court considered that he had no role in relation to same. He agreed that he had made difficulties about ensuring that some of the provincial properties even to the point of complaining that insurance issues prevented these properties being shown to purchasers but conceded that the court had been ready to make whatever arrangements with funding out of the money in court to facilitate such insurance.

Role of court now.

22. It is clear that the role of the court in the initial stages following the formalisation of the order consequent upon the judgment of Sheehan J. was to assistance in its implementation and execution faithfully and without raising any new cause or causes of action other than to determine minor disputes arising from consequential implied powers which might have to be exercised on an outcome neutral basis to ensure the smooth working of execution of the order. This pre-programmed role of the court, with minimal range of discretion, has to be examined after the lapse of time and what has emerged as a pattern of uncooperative disruptive and delaying tactics from the respondent. These tactics were not manifested in this case by the respondent in a crass or overt way, rather; they were associated with an ever present tactical banality combined with a strategic commitment to abuse the processes of court as much as possible. These behaviours of the respondent have been exhibited in his approach towards court applications with a tactical banality combined with a strategic abuse of the court process by ensuring through opposition and unmeritorious appeals to the Supreme Court. I base these conclusions on a consideration of the historic approach of the respondent to these proceedings highlighted by the multiple motions which the applicant was forced to bring to ensure the execution of the order of the court in relation to the various properties proposed to be sold. It was manifested early on in the proceedings when the respondent acquiesced with the property of a court order to a highly respected firm of estate agents to have sale of the family home when at the same time affidavit evidence of the applicant (accepted by the court at the time) showed that the respondent was interfering with the estate agent and preventing him from showing parties part of the house or facilitating inspections of potential customers. It was also manifested this time by reason of his insistence on wildly unrealistic reserve prices for the property which had the effect of gravely prejudicing the sale in what was then a falling and very unstable market.

23. The finality of the respondent is exemplified to a high level by the respondent's notice of motion dated 25th October, 2012, returnable on 28th October, 2011, seeking the court's approval of a proposed restructuring of the liabilities of the parties, with the financial institution as set forth in a letter of the financial institution dated 20th October, 2011, and an order vacating so much of the order of the High Court (Abbott J.) made on 29th April, 2010, directing the sale not only of the provincial properties, but also the family home. The proposal also involved an order directing payment to the financial institution of the sum of €1,000,000 from the proceeds of the French property and the sum of €170,000 in full discharge of the outstanding balance on the mortgage on the family home, and an order directing the transfer by the applicant of her entire and legal beneficial interest in the provincial properties and the family home to the respondent, and for various orders paying out the balance of the proceeds of the sale of the French property to the parties and their solicitors. The applicant's grounding affidavits for such a motion exhibited a letter from the financial institution offering this restructuring and was also replete with the averments of the respondent that he would cooperate with the sale of the provincial properties. Yet at the same time, the respondent in his proposals to the court, was proposing a "pay out" to the applicant which would not have been sufficient to enable her to have the benefit of the judgment of Sheehan J., where he stated that the scheme of his judgment envisaged that both parties would have to buy living accommodation for themselves in early course. This outcome was in the face of the respondent having negotiated the prospect of keeping the family home in his name and securing the entire indebtedness of the family thereon, having been directed by the judgment of Sheehan J. and a subsequent order made by Sheehan J. before the onset of his illness to cooperate in relation to the sale of the family home among the other assets. The respondent's banality in (at all times) asserting that he wished to adhere to the letter and spirit of the judgment of Sheehan J. is to be contrasted starkly with his persistent determination to selectively extract from the judgment of Sheehan J. the statements which best suited his overall strategy in the case, which was to pursue the objective of repayment of debts to the exclusion of any provision worth talking about for the applicant, notwithstanding that the judgment of Sheehan J. clearly and explicitly mentioned that the purchase of dwelling houses for the parties would be an immediate priority in relation to the dispersement of funds out of the proceeds of sale of the properties and also the acknowledgement by Sheehan J. in his judgment that neither party was in employment and that day to day expenses/maintenance would have to be considered in relation to dispersements to made consistent with catering for the indebtedness of the family. The banality of the respondent in relation to his stated intention to cooperate with the sale of the provincial properties as demonstrated in his averment in his affidavit of 22nd July, 2011, at para. 44 where he avers in relation to the sale of the three properties in Navan (part of the provincial properties) where he says:-

> "44. R. have nominated a marketing budget and also reserve prices based on their local knowledge of the market in "X" and which S.H. Auctioneers have ignored. Formal written proposals are in record for over one month from R. Auctioneers for sale and marketing campaign with no response.
>
> 45. Should S. H. and R. Auctioneers cooperate for the sale of (three properties) these properties could be placed on the market quickly. R. had advised a possible "rent to sell" option, which I believe should also be considered as part of a sales strategy.

This strongly positive action with the implied promise of a quick sale in relation to these properties contrasts starkly with the evidence given by the respondent in the hearing where he stated that he considered that he had no function in relation to the sale of the

provincial properties once an order of the court had been made.

24. The applicant has been forced by a series of events to request an order of the court joining the financial institution as a notice party for the purpose of asserting her separate right and entitlement to an unencumbered share in the proceeds of the French property. This separate entitlement has been contested on two fronts by the financial institution on the one hand, and the respondent on the other. The financial institution claims an equitable charge on the proceeds, and also a claim that the applicant is not entitled thereto by reason of the principles of equity relating to unjust enrichment. The respondent on the other hand, while not accepting the claims of the financial institution in relation to such equitable rights in relation to the applicant's share of the proceeds or the respondent's share of the proceeds, has argued in earlier submissions that the applicant was not entitled to the share in the French property by reason of a resulting trust to him and his claimed rebuttal of the presumption of advancement relating to her joint ownership. The submissions also argued that there should be no disbursement to the applicant by reason of the fact that same would constitute an unlawful or unfair preferment of the applicant as a creditor to the other creditors. The applicant in her submissions contested the claims of both the financial institution and the respondent and it appears that as a result of the exchange of the written submissions, the financial institution felt moved to send the so called Calderbank letter to the parties. When the case resumed for hearing in relation to the notice party issue, the court was faced with the so called Calderbank letter, this time as an open offer before the court which the applicant had accepted, (as it applied to her), but which the respondent refused to accept insofar as it applied to him.

25. The conclusion and decisions of this Court set out later in this judgment rest on the premise that the court has jurisdiction or is entitled to depart from the almost automatic or mechanical adherence to the judgment of Sheehan J. and the order made in consequence thereof by the High Court (Abbott J.). I consider that this Court is now so entitled. The reasons for this conclusion are as follows:-

1. It is now well over six years since the judicial proceedings herein were commenced and five years since they were decided. This is an entirely unacceptable delay in relation to the execution of any court order but more especially in relation to the execution of orders in judicial separation proceedings for the following reasons:-

(a) The granting of a decree of judicial separation is most often formally predicated on proper provision being made in advance of such separation decree, and in the case of a marriage with dependent children such proper provision is mandatory insofar a pre-condition therefore is that it is in the interest of the dependent children, which in this case means that proper provision has been made.

(b) While there is no statutory guide in relation to the overall time guidelines for execution, there is one statutory provision relating to the finalisation of pension adjustment orders within one year of the judicial separation/divorce order, which may be profitably used to provide a yardstick for the normal conclusion of execution by the delivery of the provision (of whatever kind) in possession to the parties.

(c) Recent friendly settlements of the Irish Government and decisions of the Court of Human Rights in relation to cases before the Irish Courts and, in particular, one family law case with which I was familiar and was involved, would indicate that the delay in relation to execution is one in respect of which (at the very least) the applicant might bring a successful complaint and claim for damages against the Irish State for such delay.

(d) Delay of this kind often means that properties to be bought or sold fall into disrepair and depreciate and, in addition, opportunities for the purchase of alternative properties are lost and all the while the benefit in kind from enjoying the proceeds of execution as, for instance, the opportunity of buying an alternative house which may be occupied encumbrance and rent free, are lost. These disadvantages are very oppressive to the parties in the case. This case exemplifies such oppression especially in the case of the applicant who might be expected to have bought an apartment or flat at least with a reasonable timely sale of the family home and property in France, and a proportionate disposition and payment out of the funds sufficient to allow her to engage in such purchase. The same comments may also apply to the respondent, but he has complained less of the hardship of it and has indicated that he has found accommodation with a relative and does not seem to have allowed these considerations to distract him from his main purpose which was to discharge the indebtedness almost to the exclusion of all other disbursements in accordance with the judgment of Sheehan J.

(e) The prolonged delay in execution, in cases such this ,often involved protracted applications being made repeatedly, giving rise to a frittering away of the joint assets by costs and also taking up a vast amount of court resources, thereby constituting an unnecessary drain on state expenditure.

(f) Such long delays are often associated with abuse of process which the court has a duty, (having regard to its implied powers to control its own procedures), to avoid by taking the necessary steps.

3. The case has changed from the date of the order of Sheehan J. from one in which the financial institution was a passive and un-notified entity to a party actively seeking participation in relation to asserting its rights regarding matters which escaped the attention of the court in the judgment of Sheehan J., and of which the financial institution had no notice in terms of the surprise conveyance of the French property into joint names of respondent and applicant, and also in relation to interim disbursements made by the court.

4. The court is now faced with the so called Calderbank letter which has become an open offer to the applicant and the respondent which the applicant appears to accept notwithstanding the rejection thereof by the respondent. This outcome places the court in a dilemma as to whether it should accept the outline offer and acceptance as between the financial institution and the applicant, or insist on the litigation of the complex legal issues as between the financial institution and the applicant. A flavour of such legal issues, reflecting the arguments which were suggested by the final submissions of counsel for the financial institution at para. 30 affecting the respondent, is given as follows:-

(a) the idea a quist close trust, as set out a para. 43(ii);

(b) the right to trace an equity against the net proceeds;

(c) that were the respondent not to pay the net proceeds to the bank he would be unjustly enriched thereby.

The cost of hearing such an issue, or issues, on a tri-partite basis relating to the interest of the applicant in the net proceeds of the French property would be enormous, and would have the potential to further erode the assets of the parties. Having heard the evidence in the case against the respondent, I am satisfied that both financial institution and applicant faced uncertainty in relation to the litigation outcome of their issue in relation to the French net proceeds and hence, I consider that they acted in their interests in seeking to compromise this issue through their offer and acceptance of the provisions in the so called Calderbank letter as it related to them. While such acceptance of a settlement as between the financial institution and the applicant would not be justified or conceivable immediately after the judgment of Sheehan J. and order of this Court in 2009, it is entirely appropriate that the court accepts this attempted settlement as a necessary building block to ensure the making of provision for at least one party. To the extent that the offer to the applicant represents a considerable reduction of her half share of the entire proceeds in court in favour of either financial institution or respondent, it represents a potential concession in favour of the respondent away from the potential equality of the judgment of Sheehan J. in the event of a good realisation of the balance of the assets.

I have provisionally accepted this attempted settlement also on the basis that (in structural terms) it allows of the more efficient and profitable disposal of the assets in accordance with the judgment of Sheehan J. insofar as the same may be disposed of by the respondent without the inhibiting effect of such judgment, subject only to consultations with the financial institution to which he will remain indebted. I have also been persuaded to accept this attempted settlement on the foregoing basis because the applicant, through her counsel, has agreed that on receipt of the money therefrom that she will not reduce her assets below the level of €300,000, and on the basis that the court defers for the moment dealing with her divorce application by dovetailing same into the present proceedings so that her divorce proceedings, coupled with the undertaking might possibly be used as a balancing item to protect against destitution of the respondent in the event of a poor outcome of his newly obtained freedom to deal with his assets as he wished as a result of this judgment. My conclusion proposed to add further financial obligations to this undertaking.

Conclusions

(1) This Court finds notwithstanding the continued contentions of the respondent that he would have actively participated in a positive manner in the sales process if given an opportunity by the applicant or the court that he acted in a manner detrimental to the sales process generally, and to the judgment of Sheehan J. and the order of this Court.

(2) In so acting, the respondent essentially abused the process of this Court through delay, causing multiple forms of assets destruction and interest accumulation (estimated by the representatives of the financial institution at €450,000 at the commencement of the hearing herein). With the intervention of the financial institution and the passing of open offers, this Court must act in the manner proposed to break the impasse created by the respondent.

(3) The respondent is entitled to judgment in respect of the money borrowed from it by the financial institution and interest thereon.

(4) On the basis that the respondent accepted that he received the demand letter of 14th December, 2012, and on the basis that the court is satisfied that Mr. M, being thoroughly familiar with the accounts and all matters relating to the business between the respondent and the financial institution, gave evidence that there was a sum of €2,801,491.82 due and owing in respect of the primary loan and in view of the fact that the court has already ordered and effected payment out of the sum of €1,000,000 to the financial institution at the conclusion of the hearing herein, the court gives judgment for €1,801,491.82 against the respondent on foot of the claim in the summary summons herein. However, in view of the decision of the court to provide an alternative structure in which the respondent may use his best endeavours in this own interest to effect the results sought by the judgment of Sheehan J., but which have been frustrated by the efforts of the respondent, the court proposes to put a stay on this judgment for a period of two years as is more particularly described in the next paragraph.

(5) The conditions of the stay are that if the respondent should sell any of the provincial properties, that the financial institution shall be bound to pay the net proceeds thereof less any agreed deductions allowed by the financial institution to the financial institution forthwith. The purpose of the stay will not only facilitate the respondent to develop market and dispose of the properties to his own satisfaction, but also to deal with any claim being made by his sister against the financial institution and in default of same, to apply to court. The said stay will also be qualified by the immediate payment of any residual sum from the net proceeds of sale of the two properties standing to the credit of the action, after payment of a sum to the respondent in the manner hereinafter appearing.

(6) While I accept the financial institution's submissions in relation to the dubiousness of the list of non-financial intuition creditors claimed by the respondent, there may be circumstances in which some creditors may have to be paid and some monies may need to be expended in developing-marketing the provincial properties left to be dealt with by the respondent at his discretion. I consider that it is appropriate that an additional sum of €100,000 be paid to the respondent out of the net proceeds still standing to the credit of the action, but on condition that the said sum shall not be paid to the respondent unless it is clear that he is now prepared to avail of same for its intended purpose and has withdrawn the French proceedings, all existing appeals to the Supreme Court in respect of these proceedings, if any, and indicates that he does not intend to appeal this judgment.

(7) In the event of a balance outstanding after payment out of the funds standing to the credit of the action directed by this judgment, such balance to be paid forthwith to the financial institution in reduction of the sums due under the judgment granted on foot of the summary summons herein.

(8) The applicant shall have no claim or order against either the respondent or the financial institution in respect of costs or otherwise upon the payment to her of the said sum of €750,000.

(9) The court makes no order on foot of the applicant's claim for divorce and adjourns same, but with liberty to the applicant to proceed with same and/or to make a claim that the said divorce proceedings would be dovetailed with the present proceedings under the statutory provisions relating thereto, with liberty to make submissions in relation to the effect of such dovetailing on these proceedings and any appeals arising therefrom.

(10) An order shall be made to lift the *in camera* rule to enable the respondent to notify the financial institution of all developments in relation to these procedures which affect the interests of the financial institution. The respondent is at liberty upon the finalisation and acceptance of the order to be made herein to negotiate with the financial institution a solution regarding the conflicting claims of the financial institution, and the respondent's sister to certain property among the provincial properties, and in relation to a proposed sale of one of these properties sought by letter of offer sent on behalf of the respondent's sister, (after the conclusion of the hearing herein) and the respondent and the financial institution and the respondent's sister may be at liberty to apply to court in relation to resolution of any further disputes in relation to this aspect.

(11) The *in camera* rule may be lifted to enable notification to the respondent's sister solicitor of this part of the judgment and formal order made in consequence.

(12) In addition to her undertaking the applicant shall not reduce her net assets below €300,000 prior to finalisation of divorce, but she may use this sum (or any part thereof) to buy unencumbered accommodation for herself.

(13) The parties shall have liberty to apply

(14) The court invites the party to address the court in relation to the formalising of this judgment into an order of this Court.

(15) The solicitors for the parties shall complete a final account of the funds standing to credit.