

BETWEEN:**ULSTER BANK IRELAND LIMITED****PLAINTIFF****– and –****ROCKROHAN ESTATE LIMITED****DEFENDANT****JUDGMENT of Mr Justice Max Barrett delivered on 10th October, 2017.****I. The Caution**

1. Mr Wymes is a veteran litigant. He has been involved in various court proceedings involving, inter alia, Ulster Bank Ireland and Rockrohan Estate for a period in excess of 30 years. So numerous have been his trips to court that the Supreme Court, on 3rd April, 2009, made a so-called 'Isaac Wunder order' restraining Mr Wymes from bringing further proceedings against certain named defendants without the prior leave of the High Court. Subsequent to that Isaac Wunder order, Mr Wymes brought further proceedings, not against any of the defendants named in the Supreme Court order, but against one of his co-plaintiffs, Mr Richard Wood. He was successful in those proceedings, entering judgment against Mr Wood on 8th February, 2010, and registering a judgment mortgage over certain lands registered on Folio 28285, County Cork (the 'Folio Lands'). On 2nd May, 2014, Mr Wymes issued well-charging proceedings against Mr Wood and Rockrohan Estate. On 19th May, 2014, he registered a caution against the Folio Lands restraining any dealing with same, except after notice to him. There is no evidence before the court to suggest that Mr Wood has any interest in the Folio Lands or any part of them. So on what basis has Mr Wymes registered his caution? In the affidavit in support of his caution, Mr Wymes avers as follows:

"1. My interest in the property registered in the name of Rockrohan Estate...on Folio 28285 of the Register Co Cork derives as follows.

(i) The entire issued ordinary share capital of Rockrohan Estate consists of 51,000 shares owned by Richard Wood...who is also the beneficial owner of 1,000 6% Cumulative Preference Shares held in trust for him by the Estate of John J Nagle (deceased). The remaining issued share capital consists of a further 1,000 6% Cumulative Preference shares registered in the name of the executor of J. Wood, Rockrohan...Co Cork.

(ii) On foot of debt obligations incurred by Mr Wood to me as of 1st August 2006, I was by Order of the Master...dated 16th October 2009 granted liberty by consent to enter judgment against Mr Wood in the sum of [€7m+]...together with an Order for the costs of the proceedings when taxed and ascertained. Judgment was thereafter entered in the Central Office on the 8th February 2010. As of the date of swearing hereof, the sum due and owing under the said judgment including interest pursuant to the Courts Act 1981 as amended is in the order of €11 million.

(iii) On 28th April 2010, a judgment mortgage was registered by me against the interest of Mr Wood in Folio 28285.

(iv) On 3rd February 2014, a conditional Order Nisi was granted to me by the High Court directing that the shares of Mr Wood in Rockrohan Estate stood charged with the payment of the amount of the judgment then owing together with interest thereon accruing. The said matter has been adjourned until the 30th June next.

(v) Pursuant to his debt obligations, Mr Wood agreed with me, and it is recorded in letters sent by me to him in the period 2009 to 2014 inclusive, that any offer for the Folio 28285 lands owned by him through Rockrohan Estate (and other lands owned by him) would require my prior agreement before acceptance, and that absent my consent, he would not dispose of any of the said lands.

2. The aforesaid facts are relied on to demonstrate an interest in the property registered in the name of Rockrohan Estate by virtue of rights in, to and over the registered property or a registered charge".

2. So, on the strength of (a) letters written by Mr Wymes to Mr Wood and (b) an alleged agreement between Mr Wymes and Mr Wood concerning, *inter alia*, the actions of a third party (a company in which Mr Wood is shareholder), Mr Wymes has registered his caution. As to (a), one person cannot bind another at law or in equity simply by writing letters which make assertions or claims. Were matters otherwise, the rule of law would quickly succumb to a tyranny of letter-writers. Nor does non-denial of an averment yield the necessary conclusion that that averment is true. As to (b), the rule in *Salomon's* case established the general principle that control of a company, however extensive, cannot justify the inference that a company and shareholder are to be treated as one legal entity. There are exceptions to this principle; however, recent case-law in this (and the neighbouring) jurisdiction has demonstrated what the learned authors of *Keane on Company Law*, 5th ed., 144, describe as a "*decided concern from the judiciary that exceptions to the principle in Salomon's case must remain limited and rare*". There is no evidence before the court that exceptional circumstances present, nothing to suggest, for example – to borrow from the renowned observation of Russell J. in *Jones v. Lipman* [1962] 1 All ER 442, 445 – that Rockrohan Estate is the creature of Mr Wood, "*a device and a sham, a mask which he holds before his face in attempt to avoid recognition by the eye of equity*". Even if there were some form of charging order in place over Mr Woods' shares in Rockrohan Estate (and there is suggestion in Mr Wymes' affidavit evidence that this may be so) such an order would not and/or does not transform Mr Wymes into an encumbrancer of any sort over the Folio Lands, let alone an encumbrancer with any priority over Ulster Bank's interests therein.

II. The Court-Ordered Sale

3. By a well-charging proceedings order, the High Court (Blayney J.) on 16th February, 1987 (a remarkably long time ago) (i) declared a sum of IR£1.25m+ to be well-charged on Rockrohan Estate's interest in the Folio Lands, together with continuing interest and costs, and (ii) directed the sale of the Folio Lands through the court in default of payment. An appeal to the Supreme Court by Rockrohan Estate resulted in a stay on the well-charging order until 2nd October, 1990. A notice to proceed with the court-directed sale was

filed on 12th February, 1999, and the court-sale process was then commenced before the Examiner. As part of that court-sale process, advertisements for incumbrancers were published in the usual way calling on all persons claiming to be incumbrancers to enter their claims at the Examiner's office on or before 3rd May, 2005. Matters were delayed when Rockrohan Estate brought a judicial review application against the Assistant Examiner seeking to prevent him proceeding with the court sale. That application was refused by the High Court (McGovern J.) on 30th March, 2007. In January, 2009, Ulster Bank sought and, on 22nd January, 2009, obtained from the High Court (Irvine J.) an order granting it possession of the Folio Lands for the purpose of carrying through the court sale, which order was amended by a later order of the High Court (Irvine J.) on 2nd July, 2009. Rockrohan Estate appealed the possession order to the Supreme Court, which appeal was heard on 27th January, 2015 and dismissed by order of that court on 26th February, 2015. Following that Supreme Court order, the court sale-process was re-entered in the Examiner's Office by Notice of Intention to Proceed dated 24th April, 2015. The matters has since been progressing within the Examiner's Office and has been listed there from time to time. As part of the preparations for the court sale of the Folio Lands a motion for directions was brought before the High Court (Haughton J.) on 20th March, 2017, when a further order was made directing, *inter alia*, that Ulster Bank be at liberty to offer the Folio Lands for sale by private treaty. Following the said directions order, conveyancing counsel to the court was re-briefed and requested to prepare particulars and conditions of sale and to advise generally. Arising out of her review of title to the Folio Lands, court counsel has now advised that before she can settle particulars and conditions of sale, steps be taken, *inter alia*, to remove the caution registered by Mr Wymes. Among the complaints made by Mr Wymes is that he has not had sight of this advice. He, of course, has no entitlement to see advice which is clothed by legal professional privilege. However, the court understands from the submissions at the hearing of the within application that a particular concern presenting with respect to Mr Wymes's caution remaining on-record is that he is such a notorious litigant that prospective purchasers finding a caution registered against him would be loath to proceed for fear of becoming embroiled in litigation with him. Whether that risk is altogether obviated by the court removing the caution remains to be seen. However, for the reasons stated above, there is, on the evidence before the court, no reason why the caution should remain.

4. In passing, the court notes Mr Wymes' contention at hearing that his caution refers to any "*dealing by the registered owner*" and thus has no bearing on a court sale. The court has already adverted to the difficulty presenting for the court sale by virtue of Mr Wymes' caution. However, it is, in any event, flawed logic to contend that in the absence of any evidence justifying a caution on a folio, such a caution should or would be allowed by the court to remain extant.

III. The Valuation of the Land.

5. Mr Wymes has alleged that the Folio Lands are being advertised for an amount less than their true value. Mr Wymes has no standing to make any such comment or to be heard at all in this regard. The court has before it, in any event, a formal letter from Lisney, the well-known estate agents and valuers, indicating that the guide price settled upon represents a proper valuation and, on that basis, is satisfied that such is so.

IV. The Order Sought

6. By notice of motion dated 24th May, 2017, Ulster Bank seeking, *inter alia*, the following orders: (i) an order directing the Property Registration Authority (the 'PRA') to remove the caution registered against Folio 28285, County Cork, on 19th May, 2014, by Mr Wymes; (ii) if necessary, an order directing the PRA to remove a caution registered against the Folio Lands by an individual by the name of Mr Thomas McCarthy. For the reasons aforesaid, the court is satisfied to make the order referred to at (i). The affidavit evidence before the court suggests that the caution referred to at (ii) is in any event going to be removed without any need for court intervention; should this change, further application can then be made.