

THE HIGH COURT

2004 135 SP

BETWEEN

NOEL SHERIDAN AND PETER QUINN TRADING UNDER THE STYLE AND PRACTICE OF SHERIDAN QUINN

PLAINTIFFS

AND

JOHN GAYNOR

DEFENDANT

TRIAL OF ISSUE

BY ORDER OF THE HIGH COURT OF THE 28TH APRIL, 2008,

CECILIA GAYNOR

PLAINTIFF

AND

NOEL SHERIDAN AND PETER QUINN TRADING UNDER THE STYLE AND PRACTICE OF SHERIDAN QUINN

RESPONDENTS

AND

JOHN GAYNOR

NOTICE PARTY

Judgment of Mr. Justice Feeney delivered on the 14th day of September, 2009.

1.1 The High Court ordered an issue to be tried on oral evidence in these proceedings. That order was made on the 28th April, 2008 and it directed that Cecilia Traynor was to be the plaintiff in the issues to be tried and Noel Sheridan and Peter Quinn trading under the style and practice of Sheridan Quinn were to be the respondents and that John Gaynor was to be a notice party.

1.2 The issues directed to be tried were, namely:-

(i) Whether Cecilia Gaynor has an interest in the lands and property at Farthingstown containing 16.2127 hectares situate in the Barony of Rathconrath County Westmeath and comprised in Folio No. 2538 of the Register of Freeholders, County Westmeath.

(ii) If Cecilia Gaynor has any interest in the said lands, what precisely is the nature and classification of that interest, that is, is it a legal or an equitable interest?

(iii) Does such a recognition of a legal interest affect the well charging Order and/or Order for sale previously made by the Court (being the Order herein dated the 12th day of July 2004 [as amended]) and, if so, does the Court, following such a recognition, have jurisdiction to make a well charging Order and/or an Order for sale in respect of the said lands and/or to make an Order for partition and subsequent sale?

(iv) If Cecilia Gaynor's interest is an equitable interest, does it rank in priority to the judgment mortgage registered by the Plaintiff?

(v) If Cecilia Gaynor estopped from relying on such an interest to frustrate the enforcement of the well charging Order and Order for sale herein?

1.3 Pursuant to the said order the plaintiff in the issue, Cecilia Gaynor, delivered her points of claim in the form of an affidavit sworn on the 22nd July, 2008. John Gaynor, the notice party in the issue, also delivered an affidavit sworn on the 22nd July, 2008 in relation to the issues ordered to be tried by the High Court. The plaintiffs in the action, the respondents in the issue, Noel Sheridan and Peter Quinn trading under the style and practice of Sheridan Quinn, delivered points of defence on the 8th August, 2008.

1.4 In the claim made by Cecilia Gaynor, as set out in her affidavit, she asserted that she had "part purchased with my brother John Gaynor the lands and bungalow type residence in Folio No. 2538 at Farthingstown, Rathconrath, Mullingar, Co. Westmeath from my cousin Edward Rogers on the 25th November, 1996 by way of private treaty". An identical claim was asserted in paragraph 1 of the affidavit of John Gaynor sworn in support of the claim made by his sister. In support of that claim it was sworn by both Cecilia Gaynor and John Gaynor that Cecilia Gaynor had discharged £20,000 or €25,394.76 towards the contract of purchase of the said lands and bungalow type residence to Edward Rogers on the 25th November, 1996 and it was further claimed that there was a hand-written statement from Edward Rogers confirming that

he had received that £20,000 "as part of the sale of contract to Cecilia Gaynor after his death". Affidavits also stated that Edward Rogers had obtained legal advice from solicitors prior to entering into the contract with John Gaynor.

1.5 A memorandum of agreement was made between Edward Rogers and John Gaynor dated the 12th December, 1996 wherein it was agreed that Edward Rogers as the vendor would sell and that John Gaynor as the purchaser would purchase in accordance with the special and general conditions of sale contained in the said agreement ALL THAT AND THOSE the property described in Folio No. 2538 of the Register County Westmeath which was held in fee simple by Edward Rogers. The stated purchase price was £25,000 and the special conditions provided, inter alia, that the sale price of £25,000 should be paid to the vendor by the immediate payment of the sum of £2,500 which was to be deemed as the deposit and that thereafter the purchaser, John Gaynor, was "to pay to the vendor the sum of £2,000 each year payable on the 28th November, 1996 or such other date as may be agreed between the parties". It was also provided for in special condition number 7 that the vendor, Edward Rogers, reserved the "sole right of residence in his favour to reside in the dwelling house on the property in sale and that his right of residence would be registered as a burden on Folio No. 2538 County Westmeath".

1.6 A deed of transfer and charge dated the 16th January 1997 was signed, sealed and delivered by Edward Rogers and John Gaynor.

1.7 The plaintiff in the issue, Cecilia Gaynor, claimed that she part purchased with her brother the lands and bungalow, the subject matter of the proceedings herein. It is claimed that the actual purchase price of the lands and bungalow from Edward Rogers were £40,000 and that Cecilia Gaynor had provided half of that sum. It is claimed by Cecilia Gaynor that she formed part of the purchase of the property by paying the said sum of £20,000 for the lands in Folio No. 2538 and that she is entitled to a fifty per cent interest in the said lands and bungalow.

1.8 In the points of defence the plaintiffs in the action and the respondents to the issue deny that the plaintiff in the issue, Cecilia Gaynor, has part purchased whether with her brother John Gaynor, or at all, the said lands and bungalow and it is denied that she has discharged £20,000 toward the alleged contract of purchase. It is also denied that Cecilia Gaynor has any interest in the said lands and it was further pleaded that if Cecilia Gaynor has or had any interest in the lands, which is denied, that it is denied that the same affects the well charging order and/or the order for sale made by the High Court on the 12th July, 2004 and varied by Court order dated the 22nd January, 2007. It is also pleaded in the points of defence that if Cecilia Gaynor has any interest in the property, which is denied, that she is estopped from relying on same to frustrate the enforcement of the well charging order or the order for sale.

2.1 Cecilia Gaynor averred that she had part purchased the lands and property at Farthingstown, containing 16.2127 hectares situated in the Barony of Rathconrath, County Westmeath and comprised in Folio No. 2538 of the Register of Freeholders, County Westmeath on the 25th November, 1996 by way of private treaty. She claimed that she thereby has a fifty per cent interest in the said lands in that she had contributed fifty per cent of the actual purchase price.

2.2 The Court heard the issue on oral evidence. The plaintiff in the issue and the notice party to the issue confirmed the information in their affidavits and gave oral evidence. Documentation was also available to the Court which was admitted by the parties. The documentation included the documents relating to the sale of the lands in question in December 1996 by Edward Rogers to John Gaynor together with other documents relating to that sale. The documents admitted also included documents concerning the source of funds to finance the purchase together with agreed and admitted documents concerning the legal advice received by Edward Rogers in relation to such sale. There was also two handwritten documents admitted in evidence dated the 25th November, 1996 and 4th September, 2000.

3.1 The contract for sale made between Edward Rogers and John Gaynor identified a purchase price of £25,000 in respect of the property contained in Folio No. 2538 of the Register County Westmeath, such purchase being subject to the special and general conditions of sale set forth in the memorandum of agreement dated the 12th December, 1996. The claim made by the plaintiff in the issue and by John Gaynor was that the stated purchase price was not the actual sum paid or to be paid to Edward Rogers but that rather the actual sum agreed was £40,000 of which Cecilia Gaynor paid half on the basis that she was to have a fifty per cent interest in the property in Folio No. 2538 which interest was to be registered in her name in a new folio after Edward Roger's death. It was claimed that such agreement was evidenced by a hand-written document signed by John Gaynor, Cecilia Gaynor and Edward Rogers dated the 4th September, 2000.

3.2 The central issue before the Court as set out in the order of the 28th April, 2008 is whether Cecilia Gaynor has an interest legal or equitable in ALL THAT AND THOSE the property described in Folio No. 2538 of the Register County Westmeath together with the bungalow thereon and if so, the nature and effect of such interest.

3.3 The evidence before the Court in the form of oral evidence and admitted documents established a number of matters. Firstly, it was established that the late Edward Rogers had owned various lands and that in December 1994 he had those lands valued. The oral evidence, supported by the admitted documentation, established that in the latter half of 1996 a proposal was considered whereby Edward Rogers would sell part of his lands to his relations. The lands which were proposed to be sold were the lands and premises set forth in Folio No. 2538 of the Register County Westmeath. At that time, Edward Rogers was residing in the bungalow situated on those lands. The evidence established that those lands and the bungalow had been valued in 1994 at the sum of £40,000. John Gaynor gave evidence that in 1996 he placed a value on the said lands and bungalow of £45,000. The evidence established that John Gaynor was interested in acquiring the lands but did not have the funds available to him to finance a purchase. A purchase did proceed but the evidence clearly establishes that the full facts concerning that purchase were not disclosed to third parties. The third parties involved in the transaction, particularly the legal advisers, were provided with incomplete and false information.

3.4 Mr. Rogers went to his solicitor, Patrick J. Groarke & Son, and indicated that he proposed to sell his lands and premises comprised in Folio No. 2538 at a certain price and on certain terms. The proposed price was £25,000, as disclosed to Mr. Groarke. The attendance of the 21st November, 1996 indicates that Edward Rogers attended Patrick J. Groarke & Son in relation to the proposed transaction which was identified as the sale of the property described in Folio No. 2538 to his cousin John Gaynor. The attendance indicated that Mr. Rogers was 75 years of age and was a bachelor and that Mr. Groarke, obviously being aware of the earlier valuation from some two years previous, advised him that the proposed purchase price represented a gross undervalue. The attendance stated "I advised re - independent advice etc., advised strongly that the purchase price on the memorandum presented to me represented a gross undervalue. Mr. Rogers replied that he was the full owner and could give it away if he liked". The proposed special conditions are set out in a document dated the 21st November, 1996 and were stated by Mr. Gaynor, in his oral evidence, to be substantially in

his handwriting. That document indicated that the lands and dwelling house were to be sold as a unit by Edward Rogers to John Gaynor and that the sale price of £25,000 was to be paid off in instalments of £2,000 each year. Further notes on that attendance indicated that a deposit of £2,500 was payable now. Patrick J. Groarke & Son determined not only to write formally to Mr. Rogers concerning the suggested undervaluation but also insisted upon him obtaining independent legal advice before signing any contract. The proposed contract also provided that Edward Rogers was to remain the sole resident in the dwelling house until his demise but that the expenses such as ESB incurred in respect of the dwelling for the period of that residence were to be paid by Edward Rogers. The contract envisaged that John Gaynor would become the full owner of the property but that Edward Rogers would have a right of residence in the house on the property until his death.

3.5 On 25th November, 1996, Patrick J. Groarke & Son wrote to Edward Rogers and stated "We again reiterate the advice which we gave to you on Thursday night last. The sale price in the contract for sale represents a gross undervalue of the property and we insist that you receive independent legal advice before contracts for sale are signed by you". Arrangements were made for Edward Rogers to receive such independent advice from Peter D. Jones & Co., solicitors. Peter Jones duly met with Edward Rogers and thereafter wrote to Patrick Groarke of Patrick J. Groarke & Son stating, "I write to advise that Mr. Rogers called to me on the 5th December seeking this advice. I considered the contract as drafted by you and the special conditions inserted in same. I purposefully drew Mr. Roger's attention to the fact that the consideration for the sale was far less than the true market value which Mr. Rogers himself advised me was somewhere in the region of £30,000. I enquired of him as to whether he understood that he was selling the land at an undervalue and he clearly understood this. He advised me that Mr. Gaynor was a second cousin and he had done a lot of work for him in the past". The letter also makes it clear that Mr. Jones went through the proposed draft contract and explained the terms and conditions to Mr. Rogers. Thereafter the contract for sale was completed and a memorandum of agreement dated the 12th December, 1996 was entered into between Edward Rogers as vendor and John Gaynor as purchaser for a purchase price of £25,000, the property being ALL THAT AND THOSE the property described in Folio No. 2538 of the Register County Westmeath. The special terms and conditions envisaged in the earlier discussions were set forth in the special conditions.

3.6 The evidence given by Cecilia Gaynor and John Gaynor was that the actual agreement was that the property described in Folio No. 2538 would be sold subject to Mr. Rogers's right of residence for his lifetime for a consideration of £40,000. £20,000 of that was to be paid by ten instalments of £2,000 and the remaining £20,000 was to be transferred into an account in the name of Mr. Rogers. The payment of that £20,000 which was to be made as part of the consideration for the purchase of the property was not to be disclosed to any third party or any solicitor. The evidence before the Court was that the explanation for this was that Mr. Rogers was afraid that he might lose his entitlement to a pension payment if such a sum was to be paid and that therefore he wished its existence to be kept secret. Neither of the two solicitors involved in the transaction were made aware of any such payment or the real nature of the agreement. The evidence before the Court was that the sum of £20,000 was provided by Cecilia Gaynor. Both Cecilia Gaynor and John Gaynor stated that the contract price contained in the memorandum of agreement of the 12th December, 1996 was not the true contract price and that it did not reflect a secret payment of £20,000 to Mr. Rogers. The evidence was that the sum of £20,000 which was paid to Edward Rogers emanated from a bank account in the joint name of Cecilia Gaynor who effectively controlled that account and that she was involved in the completion of the payment and went to the bank for that purpose.

3.7 The evidence given by Cecilia Gaynor and John Gaynor was that they both knew that the property was being sold to John Gaynor in 1996 and it would be transferred into his sole name but that a parallel or related agreement had been reached whereby after Edward Rogers's death the property would be divided. Both John Gaynor and Cecilia Gaynor stated that the division of the property was not identified or agreed in 1996 and that what was envisaged was that after Edward Rogers's death an agreement would be entered into between the two of them whereby John Gaynor would transfer a portion of the property into Cecilia Gaynor's name and that that portion of the property would have on it the bungalow. Both parties indicated that the division of the property was to be agreed after the death of Edward Rogers and that the exact division was never identified or agreed other than to the extent that the house would be on the portion of the land which was to be transferred to Cecilia Gaynor.

3.8 The evidence established that the necessity for the side agreement arose due to the fact that as Edward Rogers was in receipt of a small pension and he was apprehensive that if the payment of £20,000 was disclosed that it might affect his entitlement to such payment.

3.9 Both Cecilia Gaynor and John Gaynor claimed that the agreement for the transfer of part of Edward Rogers's land to her was made on the 25th November, 1996 and was evidenced by a letter of that date signed by Edward Rogers which stated " Farthingstown, Rathconrath, 25/11/1996 – Received from my cousin Cecilia Gaynor £20,000 on 25/11/1996 for dwelling house and surrounding area after my death. Signed: Edward Rogers". The £20,000 was paid over on a later date. That document is consistent with the evidence given by Cecilia Gaynor and John Gaynor that the actual identification of the land to be transferred to Cecilia Gaynor was not to take place until after his death in that the extent and area of the surrounding area to be transferred had not been identified. The common evidence of John Gaynor and Cecilia Gaynor was that the identification of such land or "area" was to take place after Edward Rogers's death and in fact has never taken place. As of the date of the hearing before the Court the position contended for by John Gaynor and Cecilia Gaynor was that the extent of the property, the subject matter of the agreement of the 25th November, 1996, was to be agreed, identified and described in a memorandum that was to come into existence after the death of Edward Rogers. There was no evidence as to any such agreement being completed nor was any document or contract completed identifying with certainty the area to be transferred. The private treaty pleaded by both Gaynors of the 25th November, 1996 was never related to a defined area of land.

3.10 Edward Rogers died on the 28th September, 2000 and the evidence was that shortly prior to his death a document was signed by him and by John Gaynor and Cecilia Gaynor. That document was ultimately produced in evidence even though it had not previously been discovered. No issue was taken in relation to the admissibility of that document and therefore the Court was able to consider the document. The document was drawn up at a time that Edward Rogers was in St. Mary's Hospital in Mullingar where he was to remain until his death some three and a half weeks after the date of the document. The document is hand-written and states:

"St. Peters Ward, St. Marys Hospital, Mullingar, 4/9/2000 – I John Gaynor agree that my sister Cecilia Gaynor has a 50% claim on the property in Folio No. 2538 Farthingstown, Rathconrath Mullingar, to be registered in Cecilia name

in a new folio No. after Edward Rogers demise.

Signed: John Gaynor, Signed: Cecilia Gaynor, Edward Rogers”.

The evidence of both John Gaynor and Cecilia Gaynor was that Edward Rogers in signing that document recognised that Cecilia Gaynor had provided fifty per cent of the real purchase price in 1996 and that what was envisaged was that Cecilia Gaynor's interest in the property would be registered after his death. The document refers to a fifty per cent claim on the property and that is what was claimed in the issue before the Court but the evidence before the Court was that Cecilia Gaynor had provided fifty per cent of the total purchase price but that the actual property to be transferred and incorporated into a new folio was not to be identified or agreed until after Edward Rogers's death and would be as a result of an agreement between John Gaynor and Cecilia Gaynor. The extent of the identification of the property to be included in such proposed agreement went no further than identifying that the lands which were to be the subject matter of the future agreement were to include the bungalow situated on the lands.

3.11 The evidence in relation to the actual £20,000 payment was not entirely clear. However, the weight of evidence was to the effect, and the Court accepts, that Cecilia Gaynor did pay the sum of £20,000 out of a bank account controlled by her into an account which was opened in Edward Rogers's name in the Bank of Ireland, Mullingar. There is documentation from the Bank of Ireland, Mullingar, to support such payment which confirms not only the receipt of £20,000 but also a transfer of £5,000 on the same date as the date of the lodgement into Mr. Rogers's current account. The Court also accepts the evidence that the payment was made on the basis that John Gaynor, Cecilia Gaynor and Edward Rogers all knew and were aware that it was to be a private and undisclosed payment in respect of the transfer of the lands by Edward Rogers to John Gaynor and that it was being made on the understanding that after Edward Rogers's death that John Gaynor would agree and identify with certainty the lands to be transferred to Cecilia Gaynor and that thereafter such transfer would take place and a new folio established.

3.12 The Court also heard evidence that on the 11th September, 2000, shortly before his death, Edward Rogers gave John Gaynor a cheque for £3,500. This was explained by John Gaynor, in evidence, that it had been made to balance the payments between himself and his sister. By that date by means of the annual instalments and the deposit, John Gaynor claimed that he had paid a total of £23,500 to Edward Rogers and that therefore Edward Rogers paid to him the sum of £3,500, by cheque, so that the position could be arrived at whereby John Gaynor and Cecilia Gaynor had each contributed £20,000 towards the total package in relation to the sale of Edward Rogers's land.

4.1 In summary, the evidence establishes that John Gaynor entered into an agreement to purchase in his sole name the lands of Edward Rogers for a sum of £40,000 to be paid partly by means of a £20,000 under the counter payment and partly by ten instalments of £2,000. Edward Rogers was to be allowed to reside in the house on the property until his death. The £20,000 used for the under the counter payment was provided by Cecilia Gaynor and in return for the provision of those funds it was agreed that after Edward Rogers's death that the lands would be divided, the precise portion of such lands to be agreed at that time. The facts also establish that at the time that the contract for sale was concluded between Edward Rogers and John Gaynor that both of them and Cecilia Gaynor were aware of the fact that the contract price for insertion in the contract for sale was a false and incorrect price. They all proceeded on the basis that the real purchase price would not be disclosed on the contract. The case as put forward on behalf of Cecilia Gaynor was that at the time her brother John Gaynor had purchased the lands it was for the mutual benefit of herself and her brother and that in effect John Gaynor had purchased the lands as trustee for Cecilia Gaynor. However, the evidence which was given to the Court demonstrates that that was not in fact the case as it is clear from the testimony of both John Gaynor and Cecilia Gaynor that the lands were purchased in their entirety, subject to the special conditions, by John Gaynor with it being agreed that after Edward Rogers's death that John Gaynor would transfer a portion of those lands, including the portion upon which the bungalow was located, to the sole name of Cecilia Gaynor and create a new folio. It is also the case that the actual portion to be transferred was at no time agreed or identified and that there was never any agreement or intention that Cecilia Gaynor would have a fifty per cent interest in the entire property.

4.2 It is against that factual background that this Court must determine the issues identified in the order of the 28th April, 2008.

4.3 The Court is satisfied that Cecilia Gaynor does not have an interest in the lands and property at Farthingstown containing 16.2127 hectares situate in the Barony of Rathconrath, County Westmeath and comprised in Folio No. 2538 of the Register of the Freeholders, County Westmeath. The lands were transferred by contract to John Gaynor and under that contract Cecilia Gaynor has no interest in the lands. It was not the case nor does the evidence support a claim that Cecilia Gaynor was to have a fifty per cent interest in the entire property. No evidence was given to support that contention. Rather it was a case that there was an agreement between Cecilia Gaynor, John Gaynor and Edward Rogers that, after Edward Rogers died, the lands which Edward Rogers transferred by sale to John Gaynor would be sub-divided into two separate lots by a future agreement to be concluded between John Gaynor and Cecilia Gaynor. There never was an agreement, either on the 25th November, 1996 or on any date for the transfer of any identified or certain portion of lands to Cecilia Gaynor. There is no agreement or contract for the transfer of any property to Cecilia Gaynor which can be identified with certainty. It is clear that any property which is the subject matter of a contract or agreement for sale must be described with sufficient certainty to be capable of being clearly identified. What was agreed between the parties was an agreement to agree at some future date as to the identity of the property to be transferred to Cecilia Gaynor. There is not and never was a sufficient identification of the property sufficient to establish a legal or equitable interest therein on the part of Cecilia Gaynor. The evidence which was given by her and on her behalf did not and was incapable of establishing the precise identity of the property which she claims to be hers. Given the absence of any agreement as to the identity of the property it follows that there was not and could not have been a sufficient or adequate identification of the property. It therefore follows that there is not and never has been any document which identifies the property sufficient for the Statute of Frauds (Ireland) Act 1695. Section 2 of that Act provides that, if the contract itself is not in writing, there must be some written memorandum or note of the contract, that is, some form of written evidence of it. There is not any written evidence of such a contract nor is there any sufficient written memorandum or note.

4.4 In the text book *Irish Conveyancing Law* (2nd Ed.) J. C. W. Wylie deals with the formation of a contract for the sale of land in the following terms (at para. 6.02. p. 141):-

"The first point that must be emphasised with respect to conveyancing contracts is that they must, like any other contract, comply with the general principles of the law of contract relating to formation of a contract. Thus, the parties to the purported contract must have the legal capacity to enter into such a contract. They must have had an intention to create legal relations, and the terms of their agreement must be sufficiently certain that, if necessary, a court will be able to see precisely what it is they have agreed."

On the facts of this case that certainty is entirely absent as the Court cannot identify what lands are to be the property of Cecilia Gaynor.

4.5 The Court is satisfied that the agreement in relation to the nature and extent of the proposed interest of Cecilia Gaynor in the property amounted to no more than an agreement to agree and therefore at no time did Cecilia Gaynor become entitled to an interest either legal or equitable in any identified portion of lands comprised in Folio No. 2538 of the Register of Freeholders, County Westmeath.

4.6 In arriving at the conclusion that Cecilia Gaynor did not have any interest in the said lands either legal or equitable, the Court has considered the fact that a sum of £20,000 was made available by her to enable the under the counter payment to be made to Edward Rogers. Whilst it might be possible to argue that there is no general rule that payment of money can never be part performance, sufficient to take a particular case out of the Statute of Frauds, this clearly is not such a case. The facts and circumstances surrounding the under the counter payment to Edward Rogers are not such that that payment is evidence of the existence of a contract for Cecilia Gaynor having a fifty per cent interest in the entire of the said lands. Neither does such payment relate to an agreement of sufficiently precise terms as to the lands to be transferred to result in an enforceable contract. Cecilia Gaynor has not identified any enforceable contract or agreement for the transfer of any portion of the property identified with certainty. The Supreme Court has identified the correct approach to be followed in considering whether there was a concluded agreement in the case of *Supermacs Ireland Ltd. v. Katesan (Naas) Ltd.* [2000] 4 I.R. 273. In that case Geoghegan J. held that the correct approach to identify whether there was a concluded agreement in the following terms (p. 288):-

"There cannot be a concluded agreement unless everything intended to be covered by the agreement has been either expressly or impliedly agreed."

On the facts of this case the plaintiff in the issue is unable to identify any concluded agreement because the precise portion of the lands forming part of Folio No. 2538 which were to be transferred to her were never agreed either expressly or impliedly. John Gaynor and Cecilia Gaynor have both openly acknowledged, in their oral evidence, that there was not and never has been an agreement as to what precise lands were to be transferred to Cecilia Gaynor. For Cecilia Gaynor to have a legal or equitable interest in lands those lands would have to be identified with certainty and absent such certainty the Court is satisfied that Cecilia Gaynor has not established any legal or equitable interest in any identifiable lands.

4.6 The Court is also satisfied that neither of the two documents, either the one dated the 25th November, 1996 or the 4th September, 2000 provide sufficient note or memorandum to satisfy the Statute of Frauds (Ireland) Act 1695. The first of those two documents refers to the dwelling house and surrounding area without any identification of the surrounding area and the second of those documents refers to a fifty per cent claim on the property. The extent of the surrounding area was never established or agreed. Also the evidence does not support any claim based upon John Gaynor having bought the entire property or part of the property as trustee for Cecilia Gaynor. That is not the case made by the Gaynors in evidence. The purchase by John Gaynor from Edward Rogers was for his benefit subject to a claimed future obligation to enter into an agreement yet to be agreed and was not the purchase of a half interest for Cecilia Gaynor or of any specified interest. The land was not purchased in trust. There is no basis upon which Cecilia Gaynor can assert that the lands were purchased in trust for her and therefore she cannot make the case that there has been a repudiation of a trust constituting a fraud by John Gaynor.

4.7 Even if the Court is wrong in its conclusion in relation to the finding that Cecilia Gaynor does not have an equitable interest in the lands comprised in Folio No. 2538, it is clear that John Gaynor, Cecilia Gaynor and indeed, Edward Rogers all were fully aware of what they were doing and participated in a scheme to hide the true extent of the payment to Edward Rogers and that they did so for the purposes of hiding the extent of the funds available to Edward Rogers. John Gaynor and Cecilia Gaynor are candid in acknowledging such and the Court is satisfied that it would be a breach of public policy if a contract and side agreement which were constructed to conceal from the Revenue authorities the true nature of the transactions was to be enforced.

4.8 As this Court has determined that Cecilia Gaynor has neither a legal or equitable interest in the lands comprised in Folio No. 2538 of the Register of Freeholders, County Westmeath, the issues raised at paragraphs 3, 4 and 5 of the Order of the High Court of the 28th April, 2008 do not arise. This judgment does not deal with nor does it make any findings in relation to whether or not Cecilia Gaynor has any claim for the return of the £20,000 sum or any other claim against her brother.