

## THE HIGH COURT

[2007 No. 539SP.]

BETWEEN

ROBERT HENRY SHARPE

PLAINTIFF

AND

PHILIP MEYER

DEFENDANT

**Judgment of Miss Justice Laffoy delivered on 30th day of April, 2012.****How the matter is before the Court**

1. This matter is before the Court on foot of a notice to re-enter dated 9th March, 2012 initiated by the plaintiff and returnable for 26th March, 2012. The most recent previous occasion on which the proceedings had been before the Court was 28th April, 2008 when the Court (Laffoy J.) made an order, as I understand it by consent of the parties, adjourning the proceedings generally with liberty to re-enter.

2. Unfortunately, this matter is now back before the Court in circumstances where both the plaintiff and the defendant have discharged their respective solicitors and are now appearing as personal litigants. Understandably, the parties, as personal litigants, are not well versed in relation to the proper manner of bringing the relevant issues before the Court. That imposes an enormous burden on the Court in trying to identify what the issues are and how they may be disposed of in a fair and just manner. The purpose of this judgment is to explain the current position to the parties and to have a record as to the current position, which will obviate any member of the judiciary who may have to deal with this matter, having to wade through the vast amount of documentation which I have had to wade through.

**The original proceedings**

3. This outline of the proceedings is based on the documentation on the file in the Central Office of the High Court. It is important to emphasise, however, that in accordance with normal practice the exhibits referred to in the affidavits on file are not on file.

4. The proceedings were initiated by special summons which issued on 26th July, 2007. At the time, Moriarty & Company, Solicitors, were acting for the plaintiff. The special endorsement of claim on the special summons disclosed that Robert Sharpe senior (the Testator) died on 19th June, 2004 having made his last will and testament on 3rd January, 2003. A grant of probate of the will of the Testator issued from the High Court on 8th November, 2005. The grant of probate has not been put before the Court but a copy of the will of the Testator has. In his will, the Testator appointed the defendant, his son-in-law, and a solicitor to be executors and trustees of his will. It is clear from the documentation before the Court that the solicitor renounced, and the grant of probate issued to the defendant solely. The Testator devised his entire estate to his son, the plaintiff, and his daughter, Barbara Meyer (Mrs. Meyer), who is the wife of the defendant, as tenants in common in equal shares for their own use and benefit absolutely and he appointed them residuary legatees and devisees of his will. However, the will was witnessed by the defendant and, accordingly, by virtue of s. 82 of the Succession Act 1965 (the Act of 1965) the bequest to Mrs. Meyer was voided. It was stated in the special endorsement of claim that the plaintiff accepted that Mrs. Meyer was, nonetheless, entitled to a share in the voided bequest under a partial intestacy arising in respect thereof. The primary relief claimed in the special summons was an order that the grant of probate to the defendant be revoked and that a grant of administration with the will of the Testator annexed should issue to a solicitor nominated by the plaintiff. In the alternative, a direction was sought that the defendant, as executor of the estate of the Testator, assent to the vesting of certain premises, namely, "St. Anne's", Main Street, Celbridge, County Kildare (the Celbridge Property) in the plaintiff and Mrs. Meyer as tenants in common in accordance with their respective entitlements and that the defendant finalise and complete the administration of the estate of the Testator.

5. The affidavits filed in support of, and in response to, the proceedings were as follows:

(a) The grounding affidavit was the affidavit of the plaintiff sworn on 14th August, 2007. That was a very extensive affidavit running to seventeen pages. The plaintiff averred that the Testator had been entitled to two undivided third shares of the Celbridge Property, in addition to what may be described as a modest amount of cash and shares.

(b) The plaintiff swore a supplemental affidavit on 9th November, 2007.

(c) His solicitors, A. & L. Goodbody, having entered an appearance on 24th October, 2007, the defendant swore a replying affidavit on 15th November, 2007. Once again, this was an extensive affidavit extending to ten pages. As regards the distribution of the estate of the Testator, the position adopted by the defendant was that the plaintiff was entitled to 75% of the estate, with Mrs. Meyer entitled to the remaining 25%. However, as regards the Celbridge Property, the position of the defendant was that he could not execute an assent in relation thereto until a boundary dispute in relation to it, which involved adjoining property owned by the defendant, was resolved. The boundary dispute had been raised by the plaintiff in his grounding affidavit.

(d) An affidavit was sworn by Mrs. Meyer on behalf of the defendant on 23rd November, 2007. The plaintiff appears to be relying on this affidavit in particular on his motion to re-enter.

(e) By affidavit sworn on 23rd January, 2008 the plaintiff responded to the averments contained in the defendant's affidavit and in the affidavit of Mrs. Meyer. Once again, this was a substantial affidavit running to twelve pages.

(f) Finally, on 8th February, 2008 the defendant swore a second affidavit.

6. The progress of the original proceedings was as follows:

- (a) The special summons was returnable in the Master's Court on 2nd November, 2007.
- (b) The matter was adjourned from time to time in the Master's list and it was ultimately transferred to the Chancery No. 1 List on 25th January, 2008.
- (c) It was in the Chancery No. 1 List on approximately five occasions between 18th February, 2008 and 28th April, 2008, when it was adjourned generally with liberty to re-enter.

7. I assume, although I have no evidence to support the assumption, that there was an agreement between the parties that the defendant would administer the estate on a certain basis and that the proceedings were adjourned generally to enable the defendant to comply with the agreement. I also assume that the agreement was reduced to writing. If that latter assumption is correct, the agreement should have been put before the Court by the parties on the motion to re-enter.

#### **The motion to re-enter**

8. The chronology of the motion to re-enter has been as follows:

- (a) A notice of discharge of Moriarty & Co., as solicitors for the plaintiff, was filed in the Central Office on 9th March, 2012. On the same day, the plaintiff's notice to re-enter was filed and it was made returnable for 26th March, 2012. It was grounded on an affidavit sworn by the plaintiff on 9th February, 2012.
- (b) When the matter was before the Court on 26th March, 2012, the plaintiff appeared in person. The Court was informed that the defendant wished to discharge his solicitors and that they wished to come off record and an adjournment was sought to enable that to happen. The Court (Laffoy J.) made an order re-entering the proceedings and adjourning the matter until 23rd April, 2012.
- (c) A notice of discharge of A. & L. Goodbody, as solicitors for the defendant, was filed in the Central Office on 13th April, 2012. On the same day the defendant filed a replying affidavit on 13th April, 2012 in person.
- (d) When the matter was before the Court on 23rd April, 2012 the plaintiff appeared in person and the defendant appeared in person. The Court was furnished with a further affidavit sworn by the plaintiff on 19th April, 2012 which, apparently, was filed in the Central Office on 20th April, 2012. However, it is not clear whether the affidavit was served on the defendant.

9. In his affidavit sworn on 9th February, 2012 the plaintiff does not address at all what transpired after the proceedings were adjourned generally with liberty to re-enter on 28th April, 2008. A large part of the affidavit, more than half of it, is taken up with events which occurred prior to the death of the Testator. In particular, he addresses the circumstances in which a deed of disclaimer was executed by him on 24th December, 2003, the result of which was that the Celbridge Property, which had been vested in the plaintiff's mother, Una Mary Sharpe (the Testatrix), who died on 25th October, 2001 testate, was vested in the Testator's estate, after the death of the Testator, as to two-third shares, and in the plaintiff and Mrs. Meyer, as to one-sixth share each. While I appreciate that the averments in the affidavit in relation to what happened prior to and after the death of the Testator, which to a large extent address averments made by Mrs. Meyer in her affidavit sworn on 23rd November, 2007, go to the boundary dispute issue, it is important to emphasise that, from the outset, these proceedings were concerned only with the administration of the estate of the Testator, and not with the administration of the estate of the Testatrix. There is absolutely nothing in the affidavit which deals with the situation which evolved after the initiation of these proceedings in 2007, save that it discloses that Mrs. Meyer has initiated Circuit Court proceedings for partition and sale of the Celbridge Property. It would appear from a copy of the first page of the Equity Civil Bill issued on behalf of Mrs. Meyer by her solicitors, Wilkinson & Price, which is all that has been put before this Court, that those proceedings are brought under s. 31 of the Land and Conveyancing Law Reform Act 2009 (the Act of 2009) in the Eastern Circuit, County Kildare, under Record No. E2022/11, the Equity Civil Bill having issued on 13th June, 2011. In short, the affidavit sworn on 9th February, 2012 is wholly unhelpful in informing the Court as to the current state of the administration of the estate of the Testator.

10. The replying affidavit of the defendant sworn on 13th April, 2012 is similarly unhelpful, save that it contains the following paragraph:

"It is my opinion that all of the matters raised in Mr. Sharpe's affidavit dated 9th March, 2012 have previously been dealt with *and finalised* under High Court reference 2007 No 539 SP. Mr. Sharpe initiated that action during my executorship of his father's Will. Subsequently, Mr. Sharpe of his own free will signed the Deed of Assent to his late father's estate."

If the defendant, as personal representative of the Testator, executed an assent in relation to the undivided share of the Celbridge Property to which the plaintiff became entitled on the death of the Testator and the plaintiff executed that assent, production of that document would be particularly helpful in informing the Court as to the current state of the administration of the estate of the Testator. Unfortunately, the deed of assent has not been exhibited.

11. In his affidavit sworn on 19th April, 2012, the plaintiff disputes the contents of the paragraph of the affidavit of the defendant which I have quoted in the next preceding paragraph. However, he does not deal with the issue of the assent, which, in my view, is the crucial issue. Most of the averments contained in that affidavit have no relevance to the issues in these proceedings. In particular, as I have already pointed out, there is no issue in these proceedings as to the administration of the estate of the Testatrix or as to the validity of the deed of disclaimer dated 24th December, 2003. The Court was not furnished with the exhibits referred to in that affidavit.

12. As regards the orders which the plaintiff has sought at the end of the affidavit sworn on 19th April, 2012, I would observe as follows:

- (a) The issue of the Court allowing A. & L. Goodbody to come off record as solicitors for the defendant has not arisen. The defendant discharged that firm.
- (b) The proceedings under the Act of 2009 are in the Circuit Court and this Court cannot interfere in any way in those proceedings.
- (c) In relation to the application for an "Order of Disclosure" of documents produced by A. & L. Goodbody on behalf of

Mrs. Meyer in any claim brought against the solicitors who drew up the Testator's will, which I understand to be an action for negligence, prima facie, those documents are of no relevance to the issues in these proceedings.

(d) The claim for "financial compensation and specific performance" seems to relate to the administration of the estate of the Testatrix, which I reiterate is not before the Court.

13. In the absence of proof of the basis on which the proceedings were adjourned generally with liberty to re-enter on 28th April, 2008 and what has happened since, it is impossible for the Court to determine whether the plaintiff has any entitlement to costs against the defendant, as he contends.

**Preliminary ruling**

14. While I believe that the plaintiffs motion to re-enter is misconceived, I am not satisfied that the defendant has put sufficient evidence before the Court to establish that, in his capacity as personal representative of the estate of the Testator, he has properly dealt with the vesting of the Celbridge Property in the beneficiaries under the will and on the partial intestacy of the Testator and has completed the administration of the estate of the Testator. I direct that the defendant file an affidavit establishing those facts and exhibiting all the relevant documentation, including any written agreement entered into between the parties prior to the adjournment on 28th April, 2008, the assent to which he has referred in his affidavit and the final account in the administration, by 18th May, 2012. The plaintiff will have liberty to file an affidavit in response dealing with those facts not later than 8th June, 2012. I wish to emphasise that the only issues which the plaintiff has liberty to deal with in his affidavit are the issues in relation to the vesting of the Celbridge Property and the completion of the administration of the estate of the Testator and compliance with any agreement which was entered into before the adjournment on 28th April, 2008.

15. The matter will be re-listed on Monday, 11th June, 2012.