

THE HIGH COURT

CHANCERY

[2016 No. 399SP]

BETWEEN:

D AND D

PLAINTIFFS

-AND-

S AND S

DEFENDANTS

EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on 11th day of October, 2017

1. This is a difficult case involving two couples who are neighbours. The plaintiffs have a judgment of €118,626.98 which was registered against the family home of the defendants on the 15th December, 2014. It relates to building work done by the defendants some 14 years ago on the defendants' family home in County Cavan. As the parties are neighbours and it will be difficult enough to live as neighbours without adverse publicity, the Court has used initials in this written judgment.

2. An open offer of €75,000 was made by the defendants but rejected by the plaintiffs, who are seeking a well charging order and an order for sale of the defendants' family home.

3. There is no dispute between the parties that the defendants owe the debt to the plaintiffs, so the only issue is whether they should be granted a well charging order and an order for sale. It is clear from *Quinn v. Smith* [2017] IEHC 461 that unless there is a 'good reason' the Court should grant a sale of the property

4. It gives this Court no pleasure in having this very difficult choice between two neighbours by deciding whether a lawful debt should remain unpaid or whether a family should be forced to sell their home to meet their debt, in other words, which couple should be made to suffer for the fact that one of them owes the other money?

5. The defendants argue that the fact that the charged property is a family home is a good reason not to order the sale. In essence therefore they are saying that although they accept that they owe the money to the plaintiffs, they say they should not be able to enforce the debt against them because it is a family home. Essentially the defendants are saying that it should be the plaintiffs who suffer the loss, rather than the defendants, even though it is the plaintiffs who have been out of pocket for 14 years.

6. This Court does not believe that the party that is owed a debt properly due should effectively be the party who suffers from the business mistakes of the defendants (in the sense that they over-borrowed in the past and so cannot now pay the debt).

7. This Court does not agree with the argument put forward by the defendants. First, the property itself is a 4,000 square feet property, consisting of two floors over a basement and contains two self-contained apartments. Secondly, it is not solely a family home, it is used as a commercial property, which operates in part as a bed and breakfast/self-catering accommodation. Thirdly, a valuation has been provided, albeit on the part of the plaintiffs, but nonetheless a professional and independent valuation, which values the property at €400,000, which based on anecdotal evidence, is perhaps twice the average value of a home in the County Cavan area.

8. In addition, this Court has some reservations about the evidence which was provided regarding the debts of up to €153,000 which the defendants say are also secured on the property. This is because the plaintiffs have averred that sworn evidence was provided before the Master of the High Court by the defendants that the amounts due to friends by the defendants were in fact less than the €153,000 charged on the property and that some of those charges in favour of those friends should therefore have been discharged. Support for this averment is provided by the fact the defendants' own solicitor wrote, on the 21st October, 2016, to solicitors for the plaintiffs confirming that they had forwarded Discharges to those friends of the defendants. It seems unlikely that a solicitor would waste his time sending Discharges, presumably on the instruction of his client, the defendants, unless there appeared to be a *prima facie* case that the Charges should indeed be released because the relevant loans had been discharged, as averred by the plaintiffs. Accordingly, this Court concludes that in line with the sworn evidence of the plaintiffs that on the balance of probabilities the amounts due to friends of the defendants, and charged on the family home, are in fact less than the €153,000.

9. Finally, even if there were loans of €153,000 due to friends of the defendants, a sale price of €400,000 would still leave a surplus of approximately €129,000, after paying the plaintiffs €118,000. If this sum of €129,000 is combined with the €75,000 which the defendants have indicated they could pay the plaintiffs now, as part of their open offer, this leads to a sum of approximately €200,000. Based on anecdotal evidence, it seems that such a figure would be sufficient to buy a home in County Cavan.

10. This Court is mindful that different considerations apply when a family home is at issue. However, as noted in this judgment, this does not mean that 'innocent' third parties, such as the plaintiffs have to suffer for business mistakes made by the defendants. Nonetheless, in recognition of the fact that it is a family home, this Court will put a stay of 9 months on the order. This is in recognition of the fact that an open offer has been made of €75,000, which is only €43,000 short of the debt owed of €118,000 (excluding any additional interest). Bearing in mind that the other debt secured on the property is a maximum of €153,000 and is from friends of the defendants, it may well be that the defendants may be able to secure the extra €43,000 needed to make up the shortfall from some other sources which additional borrowing could be secured on a property worth up to €400,000, which they would not then have to sell.