

**THE HIGH COURT****[2013 No. 1 M.]****IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989 THE FAMILY LAW ACT 1995 AND FAMILY LAW (DIVORCE) ACT 1996.****BETWEEN****E.H.****APPLICANT****AND****A.H.****RESPONDENT****JUDGMENT delivered by Mr. Justice Michael White on the 5th November, 2014.**

1. These are substantive family law proceedings which were commenced in the Circuit Family Court in a town in Ireland by way of Family Law Civil Bill issued by the applicant on the 7th March, 2008. The defence and counterclaim of the respondent was served on the 16th January, 2009. The proceedings took a tortuous course in the Circuit Family Court and were eventually transferred to the High Court List on the 22nd February, 2013. On the 1st March, 2013, the parties requested four days to hear the case and three days were allocated for the hearing on the 4th, 5th and 6th June, 2013. The proceedings ultimately required fifteen days hearing in the High Court which culminated on 26th March, 2014, when judgment was reserved. The dates and witnesses called are set out in Schedule 1.

2. The parties are equal shareholders and directors of a company which operates a business. In the course of the proceedings in the Circuit Court, a dispute arose between the parties, in their capacities as directors of the Company, when it was alleged by the applicant that the respondent was arbitrarily and without reason drawing down directors' loans and where the respondent separately made allegations against the applicant of diverting funds from the Company. The applicant issued a motion in the Circuit Family Court on the 11th June, 2010, returnable for the 23rd June, 2010, seeking orders pursuant to s. 35 of the Family Law Act 1995 ("the 1995 Act") restraining the respondent from disposing or dissipating funds extracted from the Company.

3. The respondent issued separate proceedings in the High Court (Record Number 2010/6566 P.) alleging the defendant in those proceedings, the applicant in these proceedings, had committed a fraud on the minority and sought to bring derivative proceedings on behalf of the Company.

4. A Circuit Court Judge made an Order in the Circuit Court on the 23rd June, 2010, which was appealed by the applicant and respondent to the High Court. The respondent in the family law proceedings, and the plaintiff in the company law proceedings, brought a motion on the 9th July, 2010, returnable for the 12th July, 2010, in the High Court. The motion taken by the respondent in the company law proceedings was compromised on the 25th January, 2011, when the company law proceedings were adjourned into the High Court Family Law List to be heard in conjunction with the family law proceedings. The appeal from the order of 23rd June, 2010, due to be heard in the High Court on Circuit on the 23rd February, was also compromised.

5. A separate Family Law Civil Bill was issued by the applicant in the Circuit Family Court in 2011 seeking divorce.

**Brief History of the Relationship and Marriage**

6. The parties met in Ireland in 1986. The applicant is from another EU member state. The parties married in accordance with the laws of this State in August 1987. They have three children – S., E., and M. The applicant is a qualified professional. The respondent worked in management in industry, prior to and in the early years of her marriage. The applicant had initial difficulty transferring his professional qualification from the EU member state of his origin to Ireland and had to retrain in Ireland.

7. The family moved to a town in 1989 and a business was opened in 1990 in the same town. The business moved to larger premises in 1996.

8. The family home of the parties is situated in the said town and is held in the joint names of the parties with mortgages in favour of the Bank of Ireland.

9. The business became very successful, and has generated significant funds for the family. The respondent provided considerable assistance to the applicant helping him to qualify in Ireland, and to learn English. She identified the business opportunity to open the business and encouraged its expansion to larger premises. The respondent has not been actively involved in running the business since 1997. The parties are equal shareholders in the Company, the vehicle that controls the business, but there is a substantial difference as to who should continue to run the business.

10. Marital relations deteriorated between the parties. The parties attended counselling to try and resolve their differences. The respondent instructed solicitors to write to the applicant in November 2006. There were a number of District Court applications made by the respondent alleging misconduct by the applicant which he has denied. The applicant voluntarily left the family home on 13th October, 2007. It is agreed between the parties that the alleged conduct underlying those District Court proceedings is not relied on at the hearing of these substantive proceedings.

11. The children of the marriage live with the respondent in the family home. Unfortunately, there has been very little contact between the applicant and his children, and now due to their age there is no issue for this Court on custody and access.

12. The parties developed student accommodation adjoining their family home which has been purpose built comprising of five

adjoining two storey houses. The residence benefits from tax reliefs. The property is subject to a substantial mortgage.

### **Interim Orders**

13. By Interim Order of the 23rd June, 2010, at a Circuit Family Court, the Company was joined as a third party to the proceedings. The respondent was prevented from dissipating any balance of monies remaining from monies withdrawn from the Company and an interim maintenance Order was made in favour of the respondent of €5,000 per month with a direction also that the applicant pay the mortgage and utilities attaching to the family home.

14. On the appeal of this Order, and the hearing of the motion in the company law proceedings, an Order was made on consent by the High Court on the 25th January, 2011 as follows:-

"(1) The Plaintiff ([A.H.]) undertakes to return the sum of €300,000 to the [Company] Limited Current Account Number [...] by close of business on the 20th January, 2011.

(2) The Plaintiff undertakes to open a separate bank account for the receipt of agreed periodic maintenance payments from the first named Defendant to include interim maintenance of €5,000 per month pursuant to the Order of the Circuit Court.

(3) The first named Defendant undertakes to pay on behalf of [the Company] a monthly sum of €3,500 net to the Plaintiff as a Director's fee until the hearing of the matrimonial proceedings.

(4) The Plaintiff undertakes to pay her own credit card expenditure from the foregoing payments.

(5) The Plaintiff undertakes that any withdrawals she may make from the [Company] current account and any use that she makes of the [Company] funds, monies and resources shall be for company purposes only, such purpose is to be notified to the first named Defendant.

(6) The first named Defendant shall comply with the terms of the Circuit Court Order of the 23rd June, 2010."

15. Subsequently by Order of the High Court of the 16th May, 2013, in the company law proceedings, it was directed that the action be listed and heard with the family law proceedings.

16. The Court has had the benefit of settlement proposals from both parties.

17. A central issue between the parties is the transfer of the shareholding in the Company. The applicant seeks to have the shareholding transferred to him, and exclusion of the respondent from the business. The respondent requests that the applicant's shareholding be transferred to her and she would employ a qualified staff member and run the business herself.

18. Responsibility for directors' drawings and the tax liability in respect of same is in dispute. There are substantial tax liabilities on the outstanding directors' loans not yet treated as salary. There is a dispute between the experts as to how the Revenue Commissioners may approach the settlement of this outstanding liability.

19. The cost and authorisation of extensive refurbishment work on the student accommodation and, to a lesser extent, on the family home is in dispute. The applicant disputes that any authority was given for this expenditure, while the respondent maintains that subsequent to District Court proceedings taken by a neighbour about noise, it was essential that refurbishment work be carried out.

20. The parties are in dispute as to the responsibility for extensive credit card spending over a period of time.

21. Part of the issue in dispute between the parties as to who will run the business is its future financial profitability. The parties blame each other for the accrual of the directors' loans. The applicant alleges that the respondent has acted irresponsibly by withdrawing monies from the Company and endangering its solvency. The respondent alleges the applicant failed to agree the expenditure on the student accommodation, required as a result of a District Court noise pollution case initiated by a neighbour, and that difficulties developed because he refused to deal with payments to her as a director by way of vote of the Company, so that the tax liability could have been discharged in the year of receipt.

22. Central to the determination of these proceedings from the Court's perspective is the transfer of the shares in the Company, as that will determine the orders the Court makes in relation to all the assets of the marriage.

23. The assets of the marriage are:-

- (1) The Company Trading as a business;
- (2) The family home;
- (3) Student accommodation;
- (4) Holiday apartment in another EU member state;
- (5) Lock-up garage in another EU member state;
- (6) 46,862 shares in Uniphar Limited;
- (7) Zurich Life Policy cash-in value on 12th June, 2013, €27,625.63;
- (8) Bank of Ireland Life Policy surrender value €2,523.85;
- (9) Bank of Ireland Life Homeloan Endowment Plain Policy, value €49,004.09;
- (10) Canada Life Policy value €2,532;
- (11) Bank of Ireland savings plan, E.H., value €2,620;

- (12) Bank of Ireland savings plan, A.H., value €300.
- (13) Irish Life exempt cash fund value on 26th May, 2013, €113,303
- (14) New Ireland Pension Managed Fund, value on 27th May, 2013, €532,654.
- (15) Canada Life Scheme, value on 9th May, 2013, €40,631.
- (16) Canada Life, value on 9th May, 2013, €143,195.
- (17) Irish Life GSE Plan, value on 14th December, 2012, €9,683.
- (18) Irish Life GSE Company Retirement Account Plan A.H., value €14,989.

#### **Expenditure on Student Accommodation**

24. M.P., Accountant, has isolated exceptional expenditure on the student accommodation of €145,267, €3,600 in 2008, €115,000 in 2009 and €26,667 in 2010.

25. In 2007 and 2008, there were difficulties between the H.'s and neighbours, who had concerns about noise and bad behaviour from the students. They issued noise pollution proceedings in the District Court. To deal with this issue a new CCTV system including both vision and audio needed to be put in place at the apartments. The applicant should have realised that expenditure was required.

26. The expenditure by the respondent was not transparent. There was some work carried out in the family home and on the boundary of the family home and the apartments. The respondent should have kept the spending on the student accommodation separate from that on the family home. The invoices should have been more comprehensive.

27. The respondent has identified expenditure of €101,756.78. She has accepted that two of the invoices from Mr. T.B., totalling €6,220 were for work on the family home. She has accepted that portion of the invoice from general building contractors was for work on the family home. There are no invoices available for €43,510.22. I do not accept that difficulty with directors' loans on which tax was not paid emanated from the dispute between the applicant and the respondent over the expenditure on the student accommodation. The reason for that difficulty is much more complex. Unfortunately, the method used by the respondent in discharging company funds on the student accommodation and the family home was replicated in other spending.

#### **Directors' Loans from the Company**

28. For five years from 1st September, 2007, to 31st August, 2012, €1,644,886 was withdrawn by the directors and, after deducting miscellaneous matters, the directors owed the Company €1,133,643 at the 31st August, 2012. The Court is satisfied that the analysis provided by M.P., Accountant, in her evidence of the 6th June, 2013, is an accurate breakdown of the directors' loans. For the three years ending on the 31st August, 2007, prior to the applicant leaving the family home, the payments made to the directors were substantially less than the net salaries due to them. There was no tax liability for the period up to the 31st August, 2007. Once Mr. H. left the family home in October 2007, the situation deteriorated. In every year between 2008 and 2012, the directors withdrew substantially more than the net salaries due to them. The amount withdrawn in excess of the net salaries for the five year period was €1,064,115.

29. In her evidence, M.P. dealt with it under a number of headings:-

- Joint Expenditure;
- Expenditure relating to the applicant;
- Expenditure relating to the respondent;
- Credit Cards;
- Miscellaneous items that could not be attributed to any particular category.

From her analysis, M.P found that the sum of €799,085 could be directly attributed to spending by the respondent. This was broken down as follows:-

- Legal and Accountancy Fees withdrawn by the respondent, €316,060;
- Lodgement to her personal bank accounts, €174,500;
- Cash Withdrawals from the Joint Bank Account, €187,890;
- Cash Withdrawals from the Company Bank Account, €40,500;
- Cash Withdrawals on Credit Cards, €32,340;
- Bank of Ireland Savings Plan, €15,053;
- Mobile Phone Bill, €4,800;
- Revenue Commissioners November 2011 Taxation, €21,142;
- Fees due to an Institute, €6,800.

One substantial payment of €148,000 to the respondent from the Company in January 2012 was made in serious breach of a High Court order.

30. There was considerable controversy arising out of payment from credit cards with substantial cross-examination of the respondent by Counsel on behalf of the applicant. At the end of the proceedings in March 2014, the respondent produced a list which was not dealt with during the original cross-examination. Nevertheless, the Court will give credit to the respondent for that sum of €38,313.32. The Court is satisfied that the sum of €139,570 (€177,883 – €38,313) was incurred by the respondent and not by the applicant.

31. Under the heading of Joint Expenditure, mortgage repayments on the family home totalled €165,844. Orthodontic fees for the children were €8,122, and €22,990 was paid to an education institute.

32. There was also considerable benefit for the respondent and the children of other items of joint expenditure including:-

- VHI, €47,553;
- Joint Life Savings Policies, €31,108;
- Electricity and Gas, €29,087;
- Sky/UPC, €5,367;
- Landline/Telephone, €3,355.

33. If one includes the repayments of mortgage on the family home which during the total period analysed was in the sole occupation of the respondent and the children, the orthodontic fees, and the education fee, the sum of €1,135,611 (€799,085 + €165,844 + €8,122 + €22,990 + €139,570) of the total directors' loans during the period of time can be attributed solely to spending on the respondent and the children. Out of the balance of €509,275, the respondent and the children received considerable benefit from approximately €116,470. €145,267 of the directors' loans were attributed to exceptional expenditure on the student accommodation which left a sum of €247,538 which the Court has allocated to expenditure by the applicant alone and that includes the disputed credit card spending of €38,313.32 presented to the Court in March 2014 by the respondent and the difference in the accounts which M.P. could not allocate in the sum of €38,607.

34. It should be noted that the total spending on the respondent and the family was net spending where the respondent did not pay tax on the amounts in her hands.

35. The Court accepts that from the 23rd June, 2010, the respondent was entitled to the sum of €5,000 per month and from the 25th January, 2011, the respondent was entitled to the sum of €8,500 per month, both amounts confirmed by Court Order. The Court accepts that there also should have been in place agreement between the parties as to what the respondent could draw between the period 13th October, 2007, the date the applicant left the family home, and 23rd June, 2010, the date of the first interim maintenance Order.

36. There is no doubt arising from the analysis carried out by M.P. that the vast majority of the directors' loans withdrawn for the five years ending the 31st August, 2012, were for the benefit of the respondent and her children. The Court is of the opinion that this placed considerable stress on the Company Accounts.

37. Both the applicant and respondent had a joint responsibility to deal with the taxation issue. The applicant should have regularised the tax position in relation to the Court ordered maintenance and directors' fees. The respondent was highly irresponsible because of the withdrawal of monies over and above the Court ordered maintenance, directors' fees, and mortgage on the family home, which alone came to €10,593 a month or €127,113 a year net.

#### **The Tax Treatment of the Directors' Loans.**

38. The Court has been invited to give an opinion as to how the Revenue Commissioners are likely to deal with the tax treatment of the outstanding directors' loans on which tax has to be paid.

39. It is a matter for the Revenue Commissioners how they deal with the tax implications of the declaration of salary in order to pay the outstanding tax liability on directors' loans.

40. The Court has been advised that a salary of €2,743,000 would have to be declared leading to a tax liability of €1,316,694. There is possibly a credit due in relation to Corporation Tax and Withholding Tax credits. The issue of penalties and interest would remain outstanding.

41. I can only give my view on this rather than any direction or any order. In the particular circumstances of this case, the non-payment of taxation on directors' loans arose directly from the difficult situation in which the parties found themselves. The parties' marriage has broken down irretrievably. Prior to the applicant's departure from the family home, the Company operated directors' loans within the ambit of the declared net salary, thus there was no tax liability outstanding for the years ending 31st August, 2007. The difficulty arose in the context of a very acrimonious dispute between the applicant and the respondent, whereby the Court has decided that the vast majority of the payments from the directors' loan account for the five-year period in question were applied for the benefit of the respondent and the children. In my opinion, it would be very unfair in those circumstances for the Revenue Commissioners not to accept a declaration of the salary in a particular tax year. It is obvious because of the length of the court proceedings, there could be no agreement between the parties because of their irreconcilable positions and that this issue could only be resolved in the context of court orders on the substantive proceedings. This Court would hope that the Revenue Commissioners would look favourably on the tax treatment of the directors' loans by accepting the declaration of this substantial salary in one particular financial year and the Court grants liberty to the parties to release this extract from the judgment to assist in the final tax determination of the directors' loans.

#### **The Legal Principles**

42. The Court is bound by the provisions of s. 20 of the Family Law Divorce Act 1996 which states:-

"20.—(1) In deciding whether to make an order under *section 12, 13, 14, 15 (1) (a), 16, 17, 18 or 22* and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.

(2) Without prejudice to the generality of subsection (1), in deciding whether to make such an order as aforesaid and in

determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

- (a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,
- (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise),
- (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be,
- (d) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,
- (e) any physical or mental disability of either of the spouses,
- (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,
- (g) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,
- (h) any income or benefits to which either of the spouses is entitled by or under statute,
- (i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,
- (j) the accommodation needs of either of the spouses,
- (k) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring,
- (l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.

(3) In deciding whether to make an order under a provision referred to in *subsection (1)* and in determining the provisions of such an order, the court shall have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.

(4) Without prejudice to the generality of *subsection (1)*, in deciding whether to make an order referred to in that subsection in favour of a dependent member of the family concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

- (a) the financial needs of the member,
- (b) the income, earning capacity (if any), property and other financial resources of the member,
- (c) any physical or mental disability of the member,
- (d) any income or benefits to which the member is entitled by or under statute,
- (e) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained,
- (f) the matters specified in paragraphs (a), (b) and (c) of subsection (2) and in subsection (3),
- (g) the accommodation needs of the member.

(5) The court shall not make an order under a provision referred to in *subsection (1)* unless it would be in the interests of justice to do so."

43. The overriding responsibility of the Court is proper provision for all the parties to the marriage and the children, taking all the factors set out in s. 20 into consideration. The Court has to consider the overriding principle of fairness and proportionality in making proper provision and in dealing with the fair allocation of the assets of the parties.

#### **Valuations of the Properties**

44. Student Accommodation – This is a valuable property with excellent potential. The valuation placed on same by the applicant's auctioneer is conservative. The Court assesses the current market value of this property at €850,000 without taking into consideration cost of sale or taxation liabilities.

The Court values the family home at €550,000.

The Court values the holiday apartment at €180,000 and the garage at €42,000.

The Court does not intend to value the Company as it is difficult to place a value on same at present due to the taxation implications which the Court has described. However if the taxation situation is resolved, the Company continues and has the potential to be very profitable, despite the projected decrease of turnover.

45. The Court is not in a position to make any finding of fact on the allegation by the respondent that the applicant was responsible for creaming off substantial profits of the Company by way of cash. The Court does not have any objective or independent evidence to rely on to sustain this allegation. The applicant has accepted that some cash was used by the household over the years prior to his departure from the family home in October 2007 but he has denied this was extensive.

46. By way of drawdown of directors' loans, the respondent has already received significant benefit from the assets at the disposal of the parties for proper provision, which is evidenced in the Court's analysis of the directors' loans to date.

#### **The Possible Transfer of Shares in the Company and Which Shareholder Shall Run the Business**

47. Since 1997 the applicant has been the hands-on person running the family company. The disputes between the parties about the gift shop and sale of jewellery are irrelevant to the Court's considerations. The applicant is a qualified professional in the business area. He has run the Company efficiently producing a huge turnover and substantial profits. He is an excellent professional in that trade. The Court in its determination of the dispute between the parties as to who should now operate same, takes that into consideration.

48. The Court does not accept the submission on behalf of the applicant that if it were to accede to the respondent's application to transfer the shareholding in the Company, a restraint of trade could not be imposed on the applicant. If the Court were to transfer the shares of the applicant to the respondent, it can impose a restraint of trade clause on the applicant provided that it is fair and limited. If it accedes to the applicant's application to transfer the respondent's shareholding in the Company, the Court has power to impose conditions on the total shareholding of the applicant in the Company, as the Court has discretion in order to make proper provision.

49. The Court can impose conditions when making a Property Adjustment Order. The overriding responsibility of the Court is to make proper provision and to do that it has jurisdiction over the entire assets of the parties and can impose conditions to ensure that any orders of the Court are complied with.

#### **Decision of the Transfer of Ownership of Shares in the Company**

50. While the proposals of the respondent have the merit of a clean break, the Court is of the opinion that the proposals are unjust and unfair to the applicant. The applicant has operated the business without the assistance of the respondent for seventeen years and has provided during that period of time an excellent standard of living for the respondent and the children. While the Court accepts that the respondent feels very strongly about her treatment during the marriage and her lack of trust of the applicant, the objective evidence remains that during the period the 1st September, 2007, to the 31st August, 2012, she was the director who acted irresponsibly towards the Company and put it in financial jeopardy. Her overall conduct of the litigation by regularly changing solicitors and accountants did not assist the constructive settlement of these proceedings. While being very angry with the applicant she herself has taken very little steps to procure alternative employment which would have assisted the family finances. I accept she was traumatised and had the full responsibility for the children, but I certainly would have expected from approximately October 2010 on she should have been more proactive about getting employment. Overall this state of affairs does not give great comfort to the Court in respect of her application to transfer the business to her. However, the Court's overriding concern about her proposal which could well work, is that it is manifestly unfair to the applicant.

51. The respondent's concern about the future security of the family is well-founded. There is thus a requirement to place conditions on the transfer of the shareholding to the applicant.

52. That presents its own challenges to the Court to try and make sure that the orders of the Court are drafted in such a way to preserve as far as possible the benefits to the respondent which will accrue to her by the court's orders. It is therefore essential that the Court put conditions on the shareholding of the Company to ensure that the Company cannot be sold or liquidated until the security that is required by the applicant to discharge the tax bill is no longer required.

53. The Court considers the applicant's proposals to settle the proceedings as generally reasonable with the exception of certain additional requirements which are considered by the Court to be important.

54. The ultimate transfer to the respondent of the family home and the student accommodation property mortgage free puts the respondent in due course in possession of valuable assets valued at present at €1.4m.

55. The Court considers maintenance of €60,000 a year for the respondent appropriate together with €12,000 each to be allocated for E. and M., provided that the net profit from the student accommodation less outgoings and payment of the instalments due on the mortgage is available to the respondent to use at her discretion. It will be part of the maintenance order that the applicant continue to discharge the mortgage instalments on the family home but that the utilities in the family home shall be the responsibility of the respondent. The maintenance order in favour of E. will expire on the 20th September, 2015.

56. A full Indemnity will be required by the Court from the applicant in relation to the outstanding tax liability on the directors' loans and restrictions put in place on the shareholding preventing its sale or disposal or the liquidation of the Company by the shareholder pending the release of any security of the student accommodation and the family home, required for the discharge of the taxation liability. This is subject to the requirements of the lender to the applicant for the loan to pay the outstanding tax liability.

57. If it were possible it would be greatly to the advantage of the parties that the Bank as part of its requirements would not require any security on the family home.

58. The Court will direct that the endowment policy with Bank of Ireland is cashed, and paid off against the capital on the mortgage outstanding on the family home.

59. If there is a balance left on the Zurich Life Policy, it is appropriate to direct that it is cashed and shared between the parties.

60. All the other Life and Pension Policies should be held by the applicant with the proviso that an undertaking will be required to apply the proceeds to pay down the capital on the mortgages. The respondent is entitled to a declaration in her favour in respect of the policies she holds. It is appropriate for the Court to receive submissions on the final orders it makes to ensure fairness to both parties.

61. It is not appropriate to limit the maintenance payment to the respondent to expire on the applicant's 60th birthday. It is open to the applicant at that time to apply to vary the maintenance. The Court does not wish to do so at present.
62. The Court does not consider it appropriate to take into account any inheritance by the applicant from his family in the EU member state of his origin.
63. The Court will direct the transfer of the holiday apartment and the garage to the applicant. This transfer will not take effect until the applicant concludes an agreement with the Revenue Commissioners, and discharges the substantial lump sum envisaged in his proposal.
64. In the event of either party wishing to appeal to the Court of Appeal, the Court will consider any application for a stay on its orders.

### **Schedule 1**

#### **Hearing Dates and Witnesses Called**

1. 4th June, 2013 E.H.
2. 5th June, 2013 E.H.
3. 6th June, 2013 E.H.  
M.P., Accountant
4. 22nd July, 2013 M.P.  
J.B., Accountant
5. 23rd July, 2013 J.B., continuing evidence  
B.F., Estate Agent
6. 24th July, 2013 B.F., continuing evidence  
L.K. Estate Agent  
P.M., Accountant
7. 25th July, 2013 P.M., continuing evidence
8. 16th December, 2013 A.H.
9. 17th December, 2013 A.H. continuing
10. 19th December, 2013 A.H. continuing  
D.P., Solicitor  
J.B.  
P.M.
11. 20th December, 2013 F.B., Tax Expert  
D.O'H., Accountant  
A.H.
12. 16th January, 2014 A.H.
13. 25th March, 2014 A.H.
14. 26th March, 2014 Final Submissions