

THE HIGH COURT

RECORD NO. 2001/1017 P

BETWEEN

JAMES STANLEY

PLAINTIFF

AND

MARY KIERAN (OTHERWISE KNOWN AS MARY CRAWLEY)
AND RIVER PROPERTIES LIMITED

DEFENDANTS

Judgment of Miss Justice Laffoy delivered on 19th July, 2007.**The proceedings**

1. This was the second of three connected cases which were listed for hearing in this Court on 1st May, 2007. The other two were:

(a) *John O'Connor v. Mary Kieran and River Properties Limited* (Record No. 2004/19479 P) (the O'Connor proceedings); and

(b) *James Stanley v. John O'Connor* (Record No. 2007/2451 P) (the 2007 proceedings).

2. The essential common feature of the three actions is that they concern the ownership of the issued shares in the second defendant and of residential property in County Kilkenny. The second defendant is a company incorporated in the British Virgin Islands. The first defendant is the registered owner of the two issued shares in the second defendant. The residential property, which is known as Brownsbarn House, is registered on Folio 4444 F of the Register of Freeholders, County Kilkenny. The lands registered on Folio 4444 F comprise an area of 4.451 hectares. The second defendant was registered as full owner on Folio 4444 F on 8th August, 2000, but the evidence establishes that the transfer under which the second defendant acquired the lands from the previous registered owner was dated 12th January, 1990. These proceedings were registered as a *lis pendens* on Folio 4444 F on 30th January, 2001. The O'Connor proceedings were registered as a *lis pendens* on Folio 4444 F on 22nd December, 2004.

3. These proceedings are also registered as a *lis pendens* against the lands registered on Folio 18341 F, County Kilkenny, on which there are registered two small plots of land aggregating .1330 hectares adjoining the lands registered on Folio 4444 F. The first defendant was registered as owner on Folio 18341 F on 15th April, 1999.

4. The O'Connor proceedings were heard on 1st May, 2007. The only appearance on behalf of the defendants in those proceedings was by the first defendant, who appeared in person. At the end of the hearing I gave an ex tempore judgment, of which there should be a stenographer's note in due course. I made the following orders:

(1) a declaration that the plaintiff, John O'Connor, has exercised the option, which the first defendant granted to him on 17th September, 2004, for the purchase of the shares held by the first defendant in the second defendant at the price of €1,600,000; and

(2) an injunction until further order restraining the first defendant by herself, her servants or agents, from disposing of, charging or otherwise dealing in the shares held by her in the second defendant.

5. These proceedings were heard on 2nd and 3rd May, 2007.

6. The 2007 proceedings which, in broad terms, address issues of priority as between John O'Connor and the plaintiff, remain to be heard.

The case as pleaded

7. In his statement of claim, which was delivered on 9th July, 2001, the plaintiff sought declaratory and injunctive relief in relation to Brownsbarn House and lands, which it was alleged were among a number of properties purchased by the plaintiff but "as a matter of convenience" were acquired in the name of the defendants on trust for the plaintiff, while the plaintiff and the first defendant were co-habiting between 1983 and 1996. Declaratory and injunctive relief was also sought in relation to certain items of personal property, which the plaintiff also alleged were in the possession of the first defendant but were his property. At the hearing, the reliefs pursued by the plaintiff were the following:

(a) a declaration that the plaintiff is the beneficial owner of the lands registered on Folio 4444 F and Folio 18341 F, County Kilkenny;

(b) further, or in the alternative, a declaration that the first defendant holds the issued share capital in the second defendant in trust for the plaintiff;

(c) a mandatory injunction directing the defendants, their servants or agents to transfer the lands registered in Folio 4444 F and Folio 18341 F of the Register of Freeholders, County Kilkenny, to the plaintiff and to execute all documents necessary to effect such transfer; and

(d) further, or in the alternative, a mandatory injunction directing the first defendant to transfer all the shares held by her in the second defendant to the plaintiff.

8. As regards the relief referred to at (a), counsel for the plaintiff made it clear that the basis of the claim is that the second defendant has at all times held the lands on a resulting trust for the plaintiff personally. As regards the relief referred to at (b), the basis of the claim is that the first defendant now holds the shares in the second defendant in trust for the plaintiff.

9. The basis of the plaintiff's claim in relation to Brownsbarn House, as pleaded in the statement of claim, is that in late 1989 the plaintiff purchased that property. The purchase price was IR£220,000, all of which was provided by the plaintiff. Additional lands were purchased with monies provided entirely by the plaintiff from Kilkenny County Council. Those properties were conveyed to the second defendant, the share capital of which is registered in the name of the first defendant and held in trust for the plaintiff. Since the purchase of the properties, a number of improvements have taken place, including the construction of a swimming pool at a cost of

approximately IR£30,000, entrance gates, fencing and land improvements at a cost of IR£10,000, decoration and maintenance and purchase of furniture totalling at least IR£100,000. All of the foregoing were financed by the plaintiff, as also was the furniture in Brownsbarn House, which it is alleged was financed out of the sale of property at Woodenbridge, County Wicklow, which it is alleged was the plaintiff's property, because he provided the purchase money, although it was conveyed to the first defendant.

10. As to what precipitated the proceedings, it was alleged that in the month of December, 2000 the plaintiff requested the first defendant to join with him in taking the necessary legal steps to mortgage his property at Brownsbarn House but she refused to co-operate or in any way assist him. Subsequently he became aware of information demonstrating that she intended disposing of the property without reference to him. He had requested her to furnish all title and relevant corporate documents pertaining to Brownsbarn House and the second defendant and to execute all necessary legal documents to transfer the property into his name but she had refused.

11. Until May, 2006, there was a solicitor on record in these proceedings (and in the *O'Connor* proceedings) for the defendants. The first defendant discharged the solicitor in May, 2006. Subsequently, by order of this Court (Clarke J.) made on 6th November, 2006 the solicitor was declared to be no longer acting for the second defendant and was allowed to come off record.

12. In a defence delivered on behalf of the defendants on 16th December, 2002 it was denied that the plaintiff purchased or acquired any of the properties referred to in the statement of claim in the name of the defendants in trust for the plaintiff. In relation to the property now in issue, Brownsbarn House and lands, the defendants specifically pleaded as follows:

That the plaintiff is estopped by reason of his conduct and representations from asserting or claiming any ownership or beneficial interest in Brownsbarn House.

That the plaintiff is estopped from asserting or claiming ownership of a beneficial interest in Brownsbarn House and lands by reason of the express agreement between the plaintiff and the first defendant that, in consideration of the first defendant living with the plaintiff as his common-law wife and personal assistant in his business affairs, the first defendant would thereafter and irrevocably be entitled to the sole and exclusive beneficial interest in the said house and lands and that the said agreement was affirmed and fully implemented by the plaintiff when he terminated the relationship between him and the first defendant "in or about the year 1989". (sic)

That Brownsbarn House and lands were not purchased by monies provided by the plaintiff as alleged and the defendants are entitled to the entire beneficial interest therein.

A denial that the plaintiff provided the monies for the purchase of the lands registered on Folio 18341 F.

A denial that the share capital of the second defendant is held in trust for the plaintiff.

13. There were also general pleas of laches and that the plaintiff's claims were statute barred.

14. Particulars were raised by the plaintiff on the defence and were replied to by the solicitor on record for the defendants on 10th October, 2003. The only matter which arises from the replies which it seems to me is relevant to the claims being pursued by the plaintiff is the assertion that, when the plaintiff and the first defendant agreed to cease cohabiting, it was specifically agreed that:

- (a) the first defendant was the beneficial and legal owner of the second defendant;
- (b) the first defendant was entitled to the beneficial ownership of Brownsbarn House;
- (c) the plaintiff was not entitled to an interest in an apartment at Lower Mount Street, Dublin; and
- (d) the plaintiff would pay IR£500,000 to the first defendant.

15. The apartment in Lower Mount Street mentioned at (c) featured in the plaintiff's statement of claim, although no relief was claimed in respect of it. I consider that the evidence given by plaintiff in relation to the ownership of that apartment is of some relevance in determining the issues which arise in these proceedings. On the pleadings the issue was whether the apartment, which in the pleadings was admittedly purchased with money indirectly provided by the plaintiff at some time after 1986 and vested in the sole name of the first defendant, was held by the first defendant in trust for the plaintiff, as asserted by the plaintiff, or subject to an agreement that the first defendant was entitled to the beneficial ownership save insofar as she should predecease the plaintiff, in which circumstances it would be the property of the plaintiff absolutely.

The course of the hearing

16. From the time these proceedings were set down for hearing, the first defendant has behaved in a manner which was wilfully and inexcusably obstructive and she adopted a similar strategy in relation to the *O'Connor* proceedings.

17. On 1st May, 2007 the first defendant left court while I was giving judgment in the *O'Connor* proceedings. After she left, the hearing of these proceedings was adjourned until 11 a.m. on 2nd May, 2007. The solicitors for the plaintiff in these proceedings were instructed to make a contact with the first defendant and inform her that the matter was proceeding on the following day.

18. The first defendant did not appear in court on 2nd May, 2007. The solicitors for the plaintiff had been unable to contact her on her mobile phone or by fax to Brownsbarn House. However, the plaintiff who, notwithstanding these proceedings, is still in communication with the first defendant testified that the first defendant had travelled by train to Dublin that morning and that he met her at Heuston Station shortly after 10 a.m. He told her the action was proceeding and that it was important for her to be there. He tried to encourage her to attend court, but she made it clear that she had no intention of coming to court.

19. Counsel for the plaintiff indicated that his instructions were to proceed with the action. The matter proceeded in the absence of the first defendant and, effectively, in the absence of the second defendant.

20. On 2nd May, 2007, I heard the evidence of the plaintiff and submissions in relation to the law made by counsel for the plaintiff. A subpoena duces tecum was served on that day on the Property Registration Authority to produce the instrument on foot of which the second defendant was registered on Folio 4444 F.

21. When the matter was resumed at 11 a.m. on 3rd May, 2007, the first defendant was in court. There being no objection from the

plaintiff, she was allowed testify. However, during the course of cross-examination by counsel for the plaintiff, she refused to participate and she subsequently left court.

22. The witness from the Land Registry attended at 2 p.m. on 3rd May, 2007 and produced the relevant instrument.

The position of the second defendant

23. In reality, the second defendant was not represented at the hearing, because, as was held by the Supreme Court in *Battle v. Irish Art Promotion Centre Limited* [1968] I.R. 252, a limited company cannot be represented in court proceedings by its managing director or other officer or servant. This point was not adverted to by counsel for the plaintiff, nor indeed by counsel for the plaintiff in the *O'Connor* proceedings.

The evidence

24. In his evidence, which was given in the absence of the first defendant and on which he was not cross-examined, the plaintiff testified that he met the first defendant in London around 1984. They started a relationship. He was separated from his wife and the first defendant was separated from her husband. After the relationship began, the first defendant took up a position as a contract nurse in the Middle East and she was away for about a year. When she returned they became a couple. The plaintiff was the chief executive officer of Bula Resources (Holdings) plc. and most of his work was outside Ireland. In 1985 the plaintiff and the first defendant lived mainly in London in an apartment which the first defendant had rented. The plaintiff had use of an apartment in Dublin.

25. The plaintiff's evidence was that, after they became a couple, the plaintiff only worked at her profession for a few weeks and thereafter he supported her until their relationship terminated in 1995.

26. In 1986 an apartment was acquired in Dalkey, County Dublin. The plaintiff's evidence was that he provided the purchase money. It was purchased in the name of the first defendant because that suited the plaintiff. He was spending 75% of his time outside Ireland. He had become totally non-resident and he did not want to establish domicile in Ireland for tax purposes. He had no intention of settling in Ireland. In the context of explaining why the apartment was acquired in the name of the first defendant, the plaintiff alluded to the fact that under the settlement with his wife she got the family home.

27. Some time later the Dalkey apartment was sold and an alternative apartment was acquired – the apartment at Lower Mount Street referred to earlier. That was also acquired in the name of the first defendant. The plaintiff's evidence was that the acquisition was funded by the proceeds of the sale of the Dalkey apartment. His intention, which he communicated to the first defendant, was that it would be hers for life. That evidence is at variance with what was pleaded in the statement of claim as outlined earlier. In 1997 or 1998, after their relationship had ended, the first defendant sold that apartment and she retained the proceeds of sale.

28. It is not necessary to make any finding as to the ownership of either apartment, because the plaintiff is not pursuing any claim in respect of either. In relation to the proceeds of sale of the Lower Mount Street property, as I have stated, no specific relief was claimed in the statement of claim in respect of it. However, the manner in which the apartment has featured in the proceedings is significant.

29. The plaintiff's evidence in relation to the acquisition of Brownsbarn House was that he was looking for a summer place or a country place around 1989. Through an agent, he saw Brownsbarn House. He liked it but the price was in excess of the money he had in mind for a country place. Nonetheless, he purchased it in late 1989 because he thought it had development potential. He paid IR£220,000 for it out of his own money. There was no borrowing in connection with the acquisition. The first defendant did not provide any part of the purchase money.

30. As to the circumstances in which Brownsbarn House became vested in the second defendant, the plaintiff's evidence was that he decided that it would be more convenient to hold it in an offshore company. He saw potential for resale. He was looking at it as an investment and he structured the acquisition accordingly. He asked his agent in Jersey, who administered the buying and selling of shares for him through similar offshore companies, to form an offshore company for him. He believed that the second defendant was a shelf company which she acquired. Initially the two issued shares in the second defendant were held by the agent in Jersey in trust for the plaintiff. The plaintiff testified that there was no accounting transaction to show that he provided the money, whatever that means. The acquisition included the house and about ten acres.

31. As far as the plaintiff was concerned the transaction was completed fairly promptly and the plaintiff's understanding was that the transaction should have been registered in 1990.

32. The plaintiff testified as to the improvements he carried out to Brownsbarn House after acquiring it. He was not in a position to say how much he spent on improvements. After the relationship of the plaintiff and the first defendant terminated in 1995, the first defendant continued in possession of Brownsbarn House, where I understand she still resides.

33. The plaintiff's evidence was that the additional land which is now registered on Folio 18341 F, County Kilkenny was acquired in 1999. The land had been owned by Kilkenny County Council, having been acquired for road widening. The plaintiff had been interested in it because he considered it would be strategically advantageous from the point of access in the event of the lands at Brownsbarn House being developed. Even though it was acquired after his relationship with the first defendant had ended, the plaintiff's evidence was that the first defendant acquired the lands now registered on Folio 18341 F in 1999 with his money. The evidence does not disclose what the purchase price was or anything else in relation to the conveyancing transaction.

34. The plaintiff's evidence was that early in 1995 he varied the instructions he had given to his Jersey agent, whom he named as Sue Neill, in relation to the issued shares in the second defendant. His evidence was that he told her that she thenceforth was holding the shares for the first defendant. He also testified that he told the first defendant that she was holding the shares on his behalf. This occurred before the relationship ended. The reason given by the plaintiff for varying the instructions was that, at the time, there was a business dispute between himself and a Russian businessman with whom he had been involved in a transaction. The Russian was threatening all sorts of actions, including tying up Brownsbarn House. The Russian was aware of the existence of the property and the manner in which it was held because at one stage the Russian had expressed an interest in acquiring it and, in that context, the plaintiff had told him about the manner in which it was held and the corporate structure. The plaintiff's evidence was that the first defendant knew the plaintiff was having problems with the Russian but did not know the details.

35. In 1998 proceedings were instituted in this Court by Bula Resources (Holdings) plc. against the plaintiff and Mir Oil Development Limited. On 6th August, 1998 a Mareva type injunction was granted to Bula Resources (Holdings) plc restraining the plaintiff from removing any of his assets within the jurisdiction out of the jurisdiction or from disposing of, transferring, charging or diminishing or

any way howsoever dealing with assets within or without the jurisdiction. Certain assets were specified in the order including "such interest as [the plaintiff] may have in the lands and premises known as Brownsbarn House, County Kilkenny comprised in Folio 4444 F, County Kilkenny" and "such interest as [the plaintiff] may have in" the apartment at Lower Mount Street. By further order of 8th September, 1998, the order of 6th August, 1998 was varied by being extended to further specified assets. Further, the plaintiff's solicitors were given liberty to notify various parties of the making of the order, including the first defendant. Subsequently, by order dated 21st December, 2000, the orders of 6th August, 1998 and 8th September, 1998 were discharged and the action against the plaintiff was struck out. The plaintiff's evidence was that the first defendant was aware of the freezing order, but did nothing about it, the implication, presumably, being that she could do nothing about it.

36. As to what precipitated these proceedings, the plaintiff's evidence differed from what was pleaded in the statement of claim. His evidence was that before he initiated the proceedings he had a meeting with the first defendant, which was long and acrimonious. He asked her to relinquish the Brownsbarn property. She refused, saying that she had suffered from "the Bula situation" and did not see why she should give it back.

37. After the proceedings were commenced, the plaintiff's relationship with the first defendant was "up and down". He tried to settle with her because he was a businessman and his policy was to avoid the courts. However, he could not achieve that until a situation arose in which he had an opportunity to participate in a potentially lucrative Russian venture. He had a right of first refusal "of sorts", which he was anxious to secure. He met with the first defendant in late 2003 and agreed to forgo his claim on Brownsbarn House in return for €450,000. He gave her a paper setting out his understanding of their agreement. The paper in question was a facsimile transmission signed by the plaintiff and dated 26th November, 2003, which was transmitted to the first defendant on 27th November, 2003. As evidenced by that document, the plaintiff's understanding of the basis on which they were both prepared to settle was that the first defendant would pay the plaintiff €450,000 on or before 1st December, 2004. In the interim, the first defendant's solicitor would hold the title deeds in relation to the Brownsbarn property. Should the sum of €450,000 not be paid on or before 1st December, 2004, the first defendant would immediately sell the property and the plaintiff would be entitled to €500,000 out of the proceeds of sale. The litigation was to cease and the *lis pendens* was to be lifted and the agreement between the first defendant and the plaintiff was to be "registered in court". The plaintiff's evidence was that the first defendant never replied to that fax.

38. The plaintiff's evidence was that he had a meeting with the first defendant in Dublin in August, 2004. By that time the Russian deal had "mutated" and he needed €1 million urgently. He struck a deal with the first defendant. Their agreement was to proceed on the basis that she would give him €500,000 by 1st November, 2004 and she would invest €500,000 in the Russian venture, which she was saying she would borrow. The plaintiff testified that he expected the first defendant to revert quickly, from which I infer that it was not a case of a deal having been struck in the sense of a concluded agreement having been reached. However, she did not revert and nothing substantive arose subsequently.

39. The foregoing evidence has to be assessed in the context of the prosecution of these proceedings and the *O'Connor* proceedings. These proceedings were commenced by plenary summons which issued on 25th January, 2001. As I have already stated, the proceedings were registered as a *lis pendens* on Folio 4444 F on 30th January, 2001. After fairly intensive activity, in the form of pleading and motions, through 2001, 2002 and 2003, nothing happened on the proceedings in 2004 and 2005. Notice of intention to proceed was served on 6th April, 2006. The matter was eventually set down for trial by the plaintiff on 15th February, 2007. The *O'Connor* proceedings were commenced by plenary summons which issued on 23rd November, 2004 and related to an option granted by the first defendant to John O'Connor on 17th September, 2004. As I have stated, a *lis pendens* was registered against Folio 4444 F on 22nd December, 2004. Pleading continued through 2005. Notice of trial was served on 9th February, 2006.

40. The only other evidence adduced by the plaintiff was the evidence of an official of the Land Registry who produced the instrument on foot of which the second defendant was registered on Folio 4444 F, County Kilkenny. The transfer on foot of which registration was effected was a transfer dated 12th January, 1990 from Geraldine Lanigan O'Keeffe to the second defendant. The consideration was IR£235,000. It was executed and was properly stamped. The witness agreed with counsel that the first defendant "signed on behalf of" the second defendant. While I inspected the transfer at the hearing, I did not observe whether that was correct or whether she witnessed the execution, in the form of affixing the corporate seal, by the second defendant. The solicitors who acted for the purchaser in the transaction were Finbar Cahill & Co. The plaintiff's evidence was that he was introduced to that firm by the first defendant.

41. No explanation was proffered for the failure to register the transfer for more than ten years. On the basis of a cursory inspection of the instrument, it would appear that there was some delay in obtaining consent to the vesting in the second defendant, a foreign company, pursuant to s. 45 of the Land Act, 1965. On the basis of the evidence, it is not possible to come to any conclusion as to the reason for the delay in registering the transfer.

42. The basis on which the first defendant was allowed to give evidence on 3rd May, 2007 was that the plaintiff could be recalled for cross-examination and re-examination on any areas of conflict which emerged. This did not happen, because the first defendant withdrew before her cross-examination was completed. In fact, counsel for the plaintiff did not get any opportunity to cross-examine the first defendant in relation to the acquisition of, and arrangements between the first defendant and the plaintiff, in relation to the lands registered on Folio 4444 F and Folio 18341 F.

43. To a certain extent the evidence of the first defendant was not in conflict with the evidence of the plaintiff. She testified that Brownsbarn House was acquired in 1989 and she thought the purchase price was IR£220,000. Finbar Cahill & Company, Solicitors, acted in the purchase. The 10% deposit was funded from the joint bank account of the plaintiff and the first defendant and the balance of the purchase money came from the plaintiff's bank account. I did not understand the first defendant to contest the plaintiff's evidence that the entire purchase money for the lands registered on Folio 4444 F was provided by the plaintiff. She testified that the purchase was completed within six weeks and the deed was stamped but was not registered for a long time. She proffered no explanation for the delay in registration. As to why the property was put into the name of the second defendant, the first defendant's evidence was that the plaintiff had not obtained a decree of divorce at the time and she did not have a legal separation. Because of those factors, the property needed to be purchased in the name of a company. However, she asserted that the property was always intended to be for her benefit and that the shares in the second defendant are hers, as is Brownsbarn House and lands. Counsel for the plaintiff was not in a position to challenge the plaintiff on that assertion because she withdrew before he had an opportunity to cross-examine her on it.

Resulting trust: the law

44. In making his submissions on the legal principles in relation to resulting trusts, counsel for the plaintiff primarily relied on the helpful commentary on the topic contained in Delany on Equity and the Law of Trusts in Ireland (3rd edition, 2003) starting at p. 146. As is pointed out by Delany, as a general principle, where ownership of property is transferred to a grantee who gives no consideration, an inference arises that the grantee holds the property by way of a resulting trust for the grantor. However, the presumption of a

resulting trust may be rebutted by evidence that a contrary result was intended or by the presumption of advancement, which involves the inference being drawn that a gift of property was intended rather than that it should be held on a resulting trust because of the relationship between the parties. Purchasing property in the name of another person is one of the transaction mechanisms which, if deployed, will give rise to a resulting trust. As Delany points out (at p. 156), where a person provides the purchase money for property, whether real or personal, which is conveyed or transferred to another person, it is presumed that the latter holds the property on a resulting trust for the person who provided the purchase money, a principle which was recognised as long ago as 1788 in *Dyer v. Dyer* (1788) 2 Cox Eq Cas 92. However, Delaney emphasises that the presumption is liable to be rebutted in two circumstances: first, where the presumption of advancement arises; and, secondly, where there is evidence that the provider of the purchase money intended to benefit the person in whose name the property is taken.

45. In relation to the first circumstance, the presumption of advancement arises by reason of the relationship which exists between the parties, where the provider of the purchase money is under an obligation recognised in equity to provide for the person in whose name the property is acquired. While the relationship of husband and wife gives rise to a presumption of advancement, the presumption does not apply to cohabitants who are not married to each other.

46. In relation to the second circumstance, the issue in any case is whether the evidence establishes that the provider of the purchase money intended to benefit the person in whose name the property is purchased. As Delany points out at p. 158, the decision of the Court of Appeal in *Standing v. Bowring* (1885) 31 Ch D 282, a case involving a voluntary transfer of property, is authority for the proposition that the relevant time for establishing evidence of intention is the time of the transfer, or in the case of a purchase in the name of another, at the time of the purchase, and the donor or the provider of the purchase money cannot subsequently change his mind.

47. As the authorities demonstrate, fraud or illegality is frequently the objective of a purchaser who buys property in the name of another, whether it is the fraudulent purpose of defeating creditors, or the illegal purpose of evading tax, or, as found by Costello J. in *Parkes v. Parkes* [1980] I.L.R.M. 137, the illegal purpose of evading the requirement of obtaining the consent of the Land Commission to vesting in a non-qualified person (e.g. a foreign national or company) under s. 45 of the Land Act, 1965. Counsel for the plaintiff very properly drew the court's attention to the authorities on the rebuttal of a resulting trust where there is a finding that property was purchased in the name of another for a fraudulent or illegal purpose, because, in the absence of the first defendant, he felt it proper to alert the court to issues which the first defendant might have raised had she properly participated in the proceedings.

48. The general principle is that where a trust is intentionally created for an illegal purpose, a resulting trust in favour of the settlor will not arise unless there is a failure to carry out the illegal purpose. However, Delany observes (at p. 159) that it would appear that, even where a transfer of property occurs for an illegal purpose, this will not prevent a resulting trust arising where the claim can be made without reliance on the unlawful purpose. This was illustrated by the decision of the House of Lords in *Tinsley v. Milligan* [1994] 1 A.C. 340, where the House of Lords found the existence of a resulting trust in circumstances where the defendant proved that she had contributed to the purchase price of a house which was acquired in the plaintiff's sole name and that there was a common understanding between the plaintiff and the defendant that they owned it jointly, notwithstanding that the objective of vesting it in the plaintiff's sole name was the perpetration of a social security fraud. Counsel for the plaintiff pointed to a later decision of the Court of Appeal in *Lowson v. Coombes* [1999] Ch 373, in which the decision in *Tinsley v. Milligan* was applied, although stressing that no question of fraudulent or illegal purpose arises in connection with the purchase of the properties at issue in these proceedings. In *Lowson v. Coombes*, the Court of Appeal held that a married man who bought property jointly with his partner, both contributing to the purchase money, but conveyed it into her sole name with the illegal purpose of frustrating any potential claim of his wife under a statutory provision was entitled, so long as he was not forced to rely on the illegality, to a declaration after the relationship with his partner had ended that she held his half share in the property on a resulting trust for his benefit and to an order that it be sold and the proceeds of sale be divided between them.

Application of the law to the facts

49. Counsel for the plaintiff advocated a very simple approach to applying the law to the facts of this case. First, he submitted that the evidence establishes that the plaintiff provided the purchase money for the acquisition of Brownsbarn House and the lands registered on Folio 4444 F and that he also provided the purchase money for the plots of land registered on Folio 18341 F. That evidence on its own gives rise to the presumption of a resulting trust. There is no evidence to rebut that presumption and therefore the conclusion must follow that the second defendant holds the lands registered on Folio 4444 F on trust for the plaintiff and the first defendant holds the lands registered on Folio 18341 F on trust for the plaintiff. Secondly, as regards the two issued shares in the second defendant, it was submitted that the only evidence was that the first defendant holds those shares by way of resulting trust on behalf of the plaintiff. The evidence of the plaintiff, in my view, is more suggestive of an express trust than a resulting trust in relation to the shares. Thirdly, it was submitted that, as regards the contention that the second defendant holds the lands registered on Folio 4444 F in trust for the plaintiff, there is no evidence that the vesting of the property in the second defendant in 1989 was for an improper motive. Fourthly, counsel for the plaintiff made it clear that the court was not being invited to make any finding in relation to the plaintiff's motivation in 1995 in directing that the issued shares in the second defendant be held in the name of the first defendant, but suggested that, because the Russian's threat, it was legitimate for the plaintiff to take precautionary action.

50. I am satisfied on the evidence that the plaintiff provided the entire consideration of IR£235,000 for the acquisition of Brownsbarn House and lands now registered on Folio 4444 F. In the absence of evidence to contradict the plaintiff's evidence on this point, I also accept that he provided the purchase money to acquire the lands registered on Folio 18341 F. Those facts alone, in the absence of a contest as to what the plaintiff intended in purchasing the properties in the names of the second defendant and the first defendant, would give rise to the presumption of a resulting trust in favour of the plaintiff in relation to the lands registered on both folios. In the case of a contest, the onus of rebutting that presumption would normally lie with the person asserting that the presumption did not apply, namely, the defendants. The defendants did not discharge that onus. There was no appearance for, or representation of, the second defendant and the first defendant did not properly participate in the proceedings.

51. However, the evidence of the plaintiff goes beyond merely establishing that he provided the purchase money. The issue the court has to address is whether the evidence raises questions about the plaintiff's intentions as to the beneficial ownership of Brownsbarn House when it was acquired in 1989 and the beneficial ownership of the shares in the second defendant. In my view, it does.

First, there is the evidence as to the acquisition of the Lower Mount Street apartment in the name of the first defendant. The plaintiff's case is that the entire purchase money was indirectly provided by him out of the proceeds of the sale of the Dalkey apartment. On the plaintiff's own evidence, a resulting trust in his favour would have arisen in relation to that property, subject to the life interest he testified he intended to confer on the first defendant. Nonetheless, after they separated, he allowed the first defendant to sell the apartment and retain the entire proceeds of sale. It may be that the plaintiff took a pragmatic view and decided that there was no point in pursuing the first defendant for his share of the proceeds of sale. Alternatively, it may be that the plaintiff desisted from pursuing the first defendant out of generosity

towards her. The history of the Dalkey apartment and the Lower Mount Street apartment was introduced to give the full context of the plaintiff's relationship and dealings with the first defendant. However, it does raise a question mark about the intentions of the plaintiff in vesting property, which he had paid for, in the sole name of the first defendant.

Secondly, the ten year delay in registering the lands registered on Folio 4444 F in the name of the second defendant raises questions. On his own evidence, the plaintiff appeared to be unaware of the delay. He claims to be the beneficial owner of the issued share capital in the second defendant, yet he appears to have had no involvement whatsoever, either directly or indirectly through solicitors acting on his behalf, in the perfection of the title of the second defendant. He apparently has not investigated the delay in registration and he cannot explain it.

Thirdly, the element of control which the plaintiff gave the first defendant over the property and the title deeds is not consistent with the plaintiff's claim to be the beneficial owner, through the medium of the second defendant, of Brownsbarn House. According to the folio, the land certificate in relation to the folio issued to the solicitor formerly on record for the first defendant in these proceedings in 2006. On the basis of the plaintiff's evidence and the public record, the plaintiff allowed the first defendant, as the sole registered proprietor of the shares in the second defendant, free rein to dispose of and encumber the lands registered on Folio 4444 F until the *lis pendens* was registered on 30th January, 2001.

Fourthly, and most significantly, the plaintiff adduced no documentary evidence of the legal or beneficial ownership of the issued shares in the second defendant and the only evidence led as to the beneficial ownership was what he testified he told Susan Neill in 1989 and what he told Susan Neill and the first defendant in 1995. In the *O'Connor* proceedings a share certificate in relation to what I understand to be the only two issued shares in the second defendant was put in evidence. That share certificate showed the first defendant as the owner of the two issued shares on 8th March, 1999. It was sealed in the presence of Susan Neill, as a director of the second defendant. Presumably, the company law code of the British Virgin Islands requires the maintenance of registers of members of the company and the making of returns. It must be assumed that the plaintiff could have adduced documentary evidence to corroborate his contention in relation to the ownership of the shares, for example, a change in the registered ownership from Susan Neill to the first defendant in 1995. Additionally, his agent in Jersey, presumably, could have given comprehensive evidence about the incorporation of the company, its membership and officers at material times and so forth. The fact that the court has only the plaintiff's word as to the ownership of shares in a limited company incorporated in a foreign jurisdiction is wholly unsatisfactory.

Fifthly, there is the curious fact that the lands registered on Folio 18341 F, which were acquired in 1999, some four years after the relationship of the plaintiff and the first defendant had terminated, and which the plaintiff testified were of strategic importance in terms of the development of the lands registered on Folio 4444 F, were acquired in the name of the first defendant, and not in the name of the second defendant. That is not consistent with the plaintiff's explanation for the acquisition of the lands registered on Folio 4444 F in the name of the second defendant, which was that he was treating the acquisition as an investment because of the development potential of the lands. One would have assumed that the acquisition of contiguous land of strategic importance would also have been taken in the name of the second defendant.

Finally, there is the proposed settlement in 2003. The plaintiff did give an explanation as to why he was prepared to forgo his claim to Brownsbarn House and lands for a fraction of its value: because he wanted funds to participate in the Russian venture. However, as with the evidence that the first defendant was allowed to retain the entirety of the proceeds of the sale of the Lower Mount Street apartment, the fact that he wanted to settle on that basis raises questions about what his intentions were in relation to the beneficial ownership of Brownsbarn House when it was purchased.

52. Leaving aside the question of the conduct of the first defendant in relation to these proceedings and the absence of the second defendant, the question for the court is whether the foregoing factors, all of which arise from evidence adduced by the plaintiff, separately or in aggregate, raise doubts as to whether the intention of the plaintiff in 1989 was to secure the beneficial ownership of Brownsbarn House to himself by holding it in the name of the second defendant and through the beneficial ownership of the shares in the second defendant. The combination of those factors suggests to me that, as a matter of probability, the plaintiff intended to benefit the first defendant. The conduct of the first defendant rendered these proceedings unsatisfactory. Counsel for the plaintiff acknowledged that, but submitted that it was a factor which was not to be held against the plaintiff. While that is so, it is the plaintiff's evidence which has raised the questions as to his intentions as to the beneficial ownership of Brownsbarn House.

53. At the insistence of the plaintiff this case proceeded in the absence of the second defendant. The failure of the plaintiff, to adduce any evidence of the current incorporated status of the second defendant, its membership and directors and officers, whether its assets are charged and so forth is difficult to comprehend. If the plaintiff is the beneficial owner of the second defendant, as he contends, he must surely be in a position to adduce satisfactory evidence of that fact.

Order

54. There will be an order dismissing the plaintiff's claim.