

THE HIGH COURT

2006 1784 P

BETWEEN

THE MOTOR INSURERS BUREAU OF IRELAND

PLAINTIFF

AND

PAULA STANBRIDGE, AUSTIN STANBRIDGE, LORRAINE STANBRIDGE AND KEVIN STANBRIDGE

DEFENDANTS

Judgment of Miss Justice Laffoy delivered on the 1st day of February, 2011.

1. The application which I am addressing in this judgment, which was made on behalf of the first defendant, as personal representative of Catherine Stanbridge, deceased, on 19th January, 2011, arose against the following background.

2. In my judgment in these proceedings, which was delivered on 8th December, 2006 ([2008] 389 IEHC), I found that disclaimers which had been executed by the second and third defendants were void by virtue of the provisions of s. 10 of the Irish Statute of Fraudulent Conveyances 1634 (10 Chas. 1 sess. 2, c.3). I stated that the first defendant, as personal representative of the deceased, is obliged to administer the estate of the deceased on the basis of the finding that the disclaimers are null and void and of no effect.

3. Subsequently, on 19th December, 2008, I dealt with the issue of the costs of the substantive proceedings and also the costs of a motion which had been brought by the plaintiff in other proceedings in this Court (Record No. 1993 No. 7354P), which was referred to as "the 2005 motion", which I had indicated in the judgment should be dismissed. As is reflected in the order of the Court, which was perfected on 5th June, 2009, as regards costs, it was ordered:

(a) that the second and third named defendants pay the plaintiff's costs of the substantive proceedings when taxed and ascertained and that no order was being made in respect of the costs of the first and fourth defendants; and

(b) as regards the 2005 motion, that the plaintiff pay to all of the defendants their respective costs when taxed and ascertained.

4. Those orders were the only orders as to costs made in the *inter partes* litigation as between the plaintiff and the defendants. In my view, when those orders were made, the jurisdiction of the Court as regards the costs of the substantive proceedings was exhausted.

5. On 19th December, 2008, as reflected in the perfected order, the Court acceded to an application on behalf of the second and third defendants that execution on foot of the order be stayed pending final determination of any appeal which the second and third defendants should bring against the judgment and order of the High Court. As I understand it, the appeal has been compromised as between the second and third defendants and the plaintiff and has been, or is in the course of being, withdrawn, so that the stay on the order of 19th December, 2008 is defunct and the obligation of the first defendant is to administer the estate of the deceased on the basis that the disclaimers are void is now in force once again.

6. The issue which was raised on the application on 19th January, 2011 is a matter which concerns the administration of the assets of the deceased and it is not a matter which arises for determination by the Court on the substantive proceedings. In November/December 2010 the solicitors who acted for the first defendant, and also for the fourth defendant, in the substantive proceedings contended that, before the assets of the estate of the deceased which are available for distribution and, in particular, the seven/ninth shares thereof which are to be distributed to the second and third defendants and in respect of which the plaintiff has an entitlement as against the second and third defendants, are ascertained, the costs incurred by the first defendant, as personal representative of the deceased, in defending the substantive proceedings must be deducted.

7. In support of that contention, counsel for the first defendant relied on s. 45(1) of the Succession Act 1965, which provides:

"The estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the estate ..., are assets for payment of the funeral, testamentary and administration expenses, debts ... and liabilities, and any legal right, and any disposition by will inconsistent with this section is void as against the creditors and any person entitled to a legal right, and the court shall, if necessary, administer the property for the purpose of the payment of the expenses, debts and liabilities and any legal right."

8. Counsel also relied on the following passage from Halsburys *Laws of England*, 5th Ed., Vol. 103 at para. 1016 under the heading "Costs of proceedings":

"Costs of proceedings are in the discretion of the court, but the discretion is a judicial one exercised on the following principles. The executor's costs of probate proceedings are testamentary expenses and therefore payable out of the estate, and the costs of other parties may be, but are not necessarily also allowed. The executor's costs of proceedings for directions or the construction of a will or the administration of the estate by the court are testamentary expenses and, if the fault is the testators, the costs of all necessary parties will be payable out of the estate, even if only one particular fund is concerned."

That passage from Halsbury deals with the costs of proceedings. In the case of these proceedings, the Court has dealt with the costs issues as regards both the substantive proceedings and the 2005 motion and the costs issues are *res judicata*.

9. The application which was before the Court on 19th January, 2011 which, as I understand it, sought a direction that the first defendant, as personal representative of the deceased, be at liberty to discharge the legal costs incurred by the personal representative, which in respect of solicitors' and counsels' fees, in accordance with the bills presented, aggregate in excess of €122,000, from the assets of the deceased prior to distributing the seven/ninth shares of the estate to which the second and third respondents are entitled on the intestacy of the deceased and in respect of which they are liable to account to the plaintiff, is misconceived. Entitlement to make such a deduction or otherwise concerns the administration of the assets of the estate of the deceased and as such it is an issue which is not before the Court in these proceedings.

10. Accordingly, I am of the view that the Court has no jurisdiction in these proceedings to give such a direction or make any order on the issue. Having said that, the first defendant was sued in the proceedings as administrator of the estate of the deceased. The first defendant makes the valid point that, if she did not defend the proceedings, she would have been exposing herself to actions in relation to the administration of the estate by the beneficiaries. Therefore, insofar as it has a claim for reimbursement against the distributions which must be made in favour of the second and third defendants, the plaintiff will have to form a view as to whether the costs incurred by the personal representative in defending the proceedings constitute administration expenses within the meaning of s. 45. If they do, then the personal representative is entitled to discharge them before distributing the estate to all of the beneficiaries, namely, all of the defendants, being the widower and three children of the deceased.

11. In summary, therefore, no direction or order will be made on foot of the application made on 19th January, 2011.