C . C

1981 No. 888Sp. Ct. 6

THE HIGH COURT

IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976 AND

IN THE MATTER OF THE FAMILY LAW (PROTECTION OF SPOUSES AND CHILDREN) ACT 1981 AND

IN THE MATTER OF THE MARRIED WOMENS STATUS ACT 1957 AND

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964 AND

IN THE MATTER OF J.C. AN INFANT

BETWEEN:

C.C.

and

S.C.

Plaintiff

Defendant

JUDGMENT of Mr. Justice McMahon delivered the 2nd day of July 1982

This is an action in which a wife is plaintiff and her husband is the defendant. The only claim litigated in the matter is that contained in paragraph 4(d) of the indorsement of claim on the special summons. It is a claim for the determination under section 12 of the Married Womens Status Act 1957 of the wife's beneficial interest in certain properties fully described in the summons. To safeguard the parties privacy I shall refer to them as (1) the Salthill property, (2) the Newcastle Park property, (3) the Limerick property, (4) the Dublin property. These properties are the fruit of 20 years of successful endeavour as a builder and property developer by the husband. The wife claims that the first two properties were acquired

with moneys which belong equally to herself and her husband and the other two properties were acquired with the proceeds arising from the disposal of properties acquired by the husband by using joint funds belonging equally to the wife and husband. In the case of the Salthill property the title to which is vested in the husband and wife jointly the husband does not dispute the wife's claim to be a beneficial joint tenant of the property with him. The present day values of the properties are (1) Salthill £300,000 (2) Newcastle Park £225,000, (3) the Limerick property £90,000, (4) the Dublin property £220,000. I am satisfied that apart from his investment in these properties the husband has no substantial funds elsewhere and that he owes the Allied Irish Banks, Salthill £61,000 which he spent on the acquisition and development of the latter two properties.

The parties married in 1956 and they have a daughter now aged 24 and a son now aged 19. The husband and wife have been living separately since March of 1980. The wife lives in an apartment in the Salthill property and has the rents of the property amounting to £18,000 gross per annum for her support.

At the time of the marriage the husband owned a public house at Athenry County Galway. He was also a builder by trade. The wife had inherited under an uncle's Will a public house and land at Loughrea County Galway. Under the Will the terms of which were not clearly established some interest

was reserved for any children the wife maght have. After marriage the husband sold his public house for £2,300 and spent £2,000 on improving the wife's property and turning her land into a dairy farm. The executors of the wife's uncle insisted that the couple should have a joint bank account and an account in the joint names of the husband and wife was opened in the Athenry branch of the Ulster Bank. The income from the public house and from the lands was paid into this account. About 1961 the property in Loughrea was sold for £9,500 and from the proceeds a farm in Kildare was bought for £9,000 the conveyance being taken in the sole name of the husband. Life in Kildare did not suit the wife and this farm was sold in 1962 for £16,000. Of this £4,000 was settled to satisfy the claims of the children under the terms of the bequest under which the wife obtained the Loughrea property. £10,750 of the money was lodged in the Ulster Bank at Kilcock in the joint names of the husband and wife and was later transferred to the joint account in their names in the Athenry branch of the same bank. In 1962 or 1963 the husband and wife moved from Kildare to Galway City. Using the funds in the joint account and money advanced by the Ulster Bank on the account the site of the Salthill premises was acquired and acting as his own builder the husband built on it a guesthouse of 16 bedrooms and a block of 10 flats at the rear of the guesthouse. The conveyance of the property was taken in the joint

names of the husband and wife. The husband commenced business in Galway in his own name as a building contractor. Deposits were made to the joint account from earnings of the guesthouse, the rents of the flats and the husband's earnings as a building contractor. The title deeds of the Salthill property were lodged as security for the joint account. In 1964 the joint account was transferred from Athenry to the Galway branch of the Ulster Bank. Having regard to the relationship between the parties and the origin of the moneys in the joint account and in the absence of any evidence to rebut the presumption of advancement there is no doubt that husband and wife were beneficially as well as legally joint tenants of the moneys in that account. The Salthill property was acquired and developed with these moneys and with money lent by the bank on the joint account to the husband and wife. It is clear, as the husband concedes, that they were beneficial joint tenants of the Salthill property. The husband and wife and their children lived in one of the apartments in the block of flats on the Salthill property. The wife managed the guesthouse for 6 or 7 years until her health deteriorated when it was closed down and converted into apartments. The wife retained sufficient from the income of the guesthouse to pay the houskeeping expenses and after the guesthouse business ceased she got a housekeeping allowance but she never operated the joint account until the marriage was on the point

of breaking up. The husband received all the income of the Salthill property not required for their support and paid it into the joint account. The wife left financial affairs entirely in her husband's hands and never discussed them with him and after the Salthill project had been completed she was not consulted about his subsequent ventures until they had commenced. As the husband's property interests developed he ceased to act as a building contractor.

The Newcastle Park property was the next development undertaken by the husband. It appears to have been commenced in 1965 when the husband paid £1,600 for a house and grounds suitable for development. He renovated the house and sold it for £17,000 and built a block of flats on the grounds. He took the conveyance of the property in his own name. He financed this development by borrowing money from the Ulster Bank on the joint account in the names of his wife and himself and the borrowing was secured by the deposit of the title deeds of the Salthill property and the Newcastle Park property. The wife has no recollection of signing any document of deposit but the evidence shows that she must have done so. At this time the husband also had an account in his sole name in the Galway branch of the Ulster Bank but he never used this account for his property undertakings and these were financed entirely from the joint account. The rents of the flats built at Newcastle Park were paid into the joint account.

There is no evidence of any explicit agreement on the wife's part that the husband should be entitled to use the money in their joint account for the purpose of his property ventures but I am satisfied that the wife, while not knowing all the sources of finance being availed of by the husband, knew that he was using the money in the joint account in this manner and she permitted him to do so regarding the property developments as a provision for the family's furture. The wife must be regarded as having provided a moiety of the money for the acquisition of the Newcastle Park property. It is immaterial whether the development arising from the use of her money in this manner is regarded as subject to a resulting trust based on an implicit consent on her part or to a constructive trust based on the fact of the husband's use of the wife's money.

In 1968 the husband embarked on a venture as a house builder at a site called Poolanrooma. He bought an area of land with planning permission for 40 houses in his sole name. The project was financed with money advanced by the Ulster Bank on the joint account secured by the deposit of the title deeds of Salthill and Newcastle Park properties. Due to delays which occurred in the development there was difficulty in repaying the Ulster Bank loan which by January 1971 amounted to £31,000. The bank was not willing to extend further credit. The Northern Bank agreed to step in and finance the project. The Northern Bank paid off the amount due to the Ulster Bank and debited this amount to an account in the name of a private company S.C. Limited formed at the

instigation of the bank of which husband and wife were the only shareholders and directors. This account was opened in October 1971 and husband and wife each gave a personal guarantee for the sum of £35,000. The title deeds to the lands of Poolanrooma were also deposited as security. The overdraft on this account was gradually paid off as the houses were sold and the account was not used for any purpose except this development. The evidence does not show whether there was a profit on the development and if so what became of it. The title to the lands does not appear ever to have been transferred to the company and the company was used simply as a selling agent to realise the investment. In those circumstances it appears to me that if there was any surplus from the project then subject to the claims of any creditors of the company and the claims of the bank it belonged to the husband and wife beneficially in equal shares.

In December 1971 as part of the change from the Ulster Bank to the Northern Bank an account was opened in the Northern Bank, Galway branch, in the husband's name. As security the title deeds of Salthill and Newcastle Park properties were deposited. This account was changed into the joint names of the husband and wife when the bank realised that the Salthill property was vested in them jointly. The wife joined in signing the letter of deposit of the Salthill property. The income from the Salthill and Castle Park

properties was paid into this account. In 1975 the bank advanced £46,000 to the husband and wife on this account to enable the husband to acquire a house and land at Ballinasloe, County Galway which he did in his own name. He improved this property and sold it in 1977 for £150,000 and out of this money he bought, again in his own name, a farm near Oranmore for £137,000. In 1981 this land was compulsorily acquired by the Land Commission and the husband received £125,000 compensation.

In my view a moiety of this money belonged beneficially to the wife because the presumption of advancement in relation to the joint bank account in the Northern Bank was not rebutted and the money for all the properties purchased by the husband was money paid into that account and money lent to the husband and wife jointly by the Northern Bank on the account.

The husband and wife separated in 1980. The evidence as to the husband's financial transactions after that date is unsatisfactory. With the compensation received from the Land Commission and further money borrowed from the Salthill branch of the Allied Irish Banks he bought a property in O'Connell Street, Dublin and another property in O'Connell Street, Limerick. The evidence does not disclose how much of the purchase money and the money spent on developing these properties was money borrowed from the Allied Irish Banks. In my view the wife has no beneficial interest in that proportion of these properties which corresponds to the proportion of the expenditure on

acquisition and improvement raised by the husband by loans from Allied Irish Banks. I cannot therefore make a determination of the wife's beneficial interest in these properties although I am satisfied that part of the purchase money was money which belonged beneficially to her.

I find that the wife is beneficially entitled to a moiety of the Salthill and Newcastle Park properties.

J McMahon
29.7.82.