

THE HIGH COURT

[2022] IEHC 156
[Record No. 2009/325R]

BETWEEN

GERARD HARRAHILL

PLAINTIFF

AND

JOHN KANE

DEFENDANT

AND

LUCY KANE

NOTICE PARTY

JUDGMENT of Mr. Justice Barr delivered electronically on the 16th day of March, 2022.

Introduction.

1. The plaintiff is the Collector General of the Revenue Commissioners. On 3rd July, 2009, the plaintiff obtained judgment against the defendant for €4,941,997.52 and costs. That judgment remains partially unsatisfied.
2. The notice party is the wife of the defendant. She is the registered owner of a property that was formally a public house known as "The Bent Elbow", Stradone, Co. Cavan, as comprised in folio 3048F, County Cavan (hereinafter 'the property').
3. In this application, the plaintiff seeks an order pursuant to O.45, r.9 of the Rules of the Superior Courts for the appointment of a receiver by way of equitable execution over the property on the basis that the purchase price for the property was paid by the defendant, making him the beneficial owner of the property.
4. The notice party maintains that the property was purchased by her from her own funds for the sum of €42,000 on or about 15th November, 2015. In a number of affidavits, she has set out varying accounts as to how she came to have the necessary funds to complete the purchase of the property.
5. The plaintiff submits that none of the purported sources of funding put forward by the notice party, were adequate to provide the purchase price for the property. The plaintiff has led evidence tending to show that the purchase price came from funds owned or controlled by the defendant.
6. The central question for the court to decide on this application is whether the plaintiff has established in evidence that, on the balance of probabilities, the funds for the purchase of the property came from entities owned or controlled by the defendant, rather than from funds provided by the notice party.

Background.

7. By summary summons issued on 3rd April, 2009, the plaintiff claimed that the defendant owed the sum of €4,941,997.52 in respect of unpaid VAT and interest thereon, in respect of the sales of motor vehicles, including farm vehicles, for the period 2001-2008. On 3rd July, 2009, the plaintiff obtained judgment from the High Court against the defendant for that sum, plus costs.

8. By a contract for sale dated 12th October, 2015, between Phelim McCabe as vendor, and the notice party as purchaser, the notice party agreed to purchase the property for the sum of €42,000. The closing date for the sale was stated to be four weeks from date of the contract for sale.
9. On 22nd February, 2016, the notice party was registered as full owner of the lands comprised in folio 3048F, County Cavan.
10. Prior to entering into the contract for sale, a planning application had been lodged by Michael Fitzpatrick Architects Limited on 15th June, 2015, seeking permission to change the use of the premises from a public house to a motor garage. That application was refused by Cavan County Council on 21st August, 2015. An appeal was lodged on behalf of the applicant for the planning permission. That appeal was successful, by virtue of a decision of An Bord Pleanála made on 29th January, 2016, which directed that planning permission should be granted. An inspection of the property carried out by Revenue officials on 21st December, 2017, revealed that the property was vacant, but that works had been carried out in the form of the erection of an office extension, together with the installation of perimeter fencing and floodlighting.
11. In an earlier application brought by the plaintiff to enforce his judgment against the defendant, the notice party claimed to be the sole beneficial owner of two properties at Cartron, Granard, County Longford. She claimed that the deposits which had been paid on the two properties in 2005, in the sums of €19,000 and €30,000 respectively, together with the cost of construction of a large new residence on the lands in 2007 and 2008, had all been funded from her own resources. In the course of those enforcement proceedings, the notice party was cross-examined before the President of the High Court on 12th May, 2017. He ruled that both deposits and the costs of construction of the new residence had all been funded by the defendant. He ruled that the notice party had not demonstrated that she had any beneficial interest in the properties.
12. In a letter dated 5th December, 2017, the solicitor then acting for the defendant, asserted that the notice party had purchased the property at Stradone, County Cavan, the subject matter of this application, "using her existing savings". However, no bank statements or other documentation had been provided to substantiate that assertion.
13. On 13th April, 2018, the plaintiff registered a judgment mortgage in respect of the judgment obtained on 3rd July, 2009 against the defendant's beneficial interest in the property comprised in folio 3048F, County Cavan.
14. On 11th April, 2019, the plaintiff issued the present notice of motion seeking the appointment of a receiver by way of equitable execution over the property. The notice party was subsequently joined as a notice party to the application. The defendant did not take any steps to defend the application. In total, the plaintiff has filed three affidavits in support of the application. The notice party has filed two affidavits setting out how she maintains that the property was bought by her with her own funds.

15. The notice party was represented in this application by Michael Finucane Solicitors until 29th June, 2021, when, on his motion, he was given liberty to come off record on behalf of the notice party. Thereafter, she contested the application as a lay litigant.

Summary of the Evidence – The Plaintiff’s Case.

16. The easiest way to summarise the evidence that was put before the court on this application, is to begin by setting out in broad terms the case made by the plaintiff; followed by the notice party’s assertions as to how she came to fund the purchase of the property; followed by the plaintiff’s response to those assertions.
17. The plaintiff’s case was set out in a number of affidavits sworn by Mr. John Magee, an Inspector of Taxes of Assistant Principal grade, employed in the Revenue Commissioners. In his first affidavit sworn on 4th April, 2019, Mr. Magee stated that he had been duly authorised to make the affidavits on behalf of the plaintiff, and that he did so from facts within his own knowledge and from a perusal of the books and records in the possession of the plaintiff. The plaintiff’s case is that during the period 1st January, 2001 to 31st December, 2008, the defendant carried on business as a dealer in cars and other vehicles, such as tractors. During that period. he failed to pay the sum of €3,077,176 due as VAT on the sale of the vehicles that he sold. That sum, together with the sum of €1,864,821.52 for interest, made up the total sum of €4,941,997.52 in respect of which the plaintiff obtained judgment against the defendant on 3rd July, 2009.
18. Thereafter, enforcement proceedings were brought against the defendant, in the course of which a number of properties and vehicles were recovered by the plaintiff from the defendant in part satisfaction of the judgment. As noted earlier, there was a dispute about the ownership of two properties at Cartron, Granard, County Longford, being the defendant’s principal private residence and another building on the property. The notice party, who was at that time the defendant’s partner, maintained that she had provided the funds of €300,000 for the house in which she lived with the defendant and their four children.
19. As previously noted, the notice party was cross-examined before Kelly P. in the High Court on 12th May, 2017. The judge found her evidence to be unreliable. He did not accept that the notice party had provided the funds for the purchase of the two properties.
20. In the course of those proceedings, an order for attachment and committal of the defendant was made by the High Court. The defendant relocated to Northern Ireland in or about 2010. The plaintiff submits that the defendant continued to actively engage in the sale and importation of vehicles into this jurisdiction. He remained in Northern Ireland until 2016. It is alleged by the plaintiff that the defendant engaged in these activities through a number of front companies that were owned or controlled by him.
21. The property, the subject matter of this application, was purchased in the name of the notice party pursuant to a contract of sale dated 12th October, 2015. The sale closed on or about 15th November, 2015. It is the plaintiff’s case that from the books and records

available to him, there is no evidence that the notice party ever had sufficient money to fund the purchase of the property for €42,000, together with ancillary costs of approximately €2,000 and the cost of the planning application to convert the premises from a public house to a motor garage, or to do the limited conversion works that were subsequently carried out.

22. The plaintiff submitted in the grounding affidavit sworn by Mr. Magee, that the evidence established on the balance of probabilities that the purchase of the property had been funded by the defendant, in an effort to re-establish his car dealership business, without that fact becoming known. Mr. Magee set out the evidential basis on which the plaintiff believed that the defendant had provided the funds for the purchase of the property. In the course of investigations that had been carried out by the Revenue Commissioners, it was discovered that while the defendant had been residing in Northern Ireland, the VAT registrations of a number of Irish VAT registered entities, were used by the defendant to avail of zero-rating on the purchase of vehicles and machines in Northern Ireland and the United Kingdom. By way of example, Mr. Magee averred that the VAT registration number of Barry Kiernan Construction Limited had been used at mid-Ulster auctions to purchase twenty-four vehicles over seven separate invoices, between August 2014 and February 2015, with a total value of STG£135,490.98. All of the invoices had been made out to Barry Kiernan Construction Limited, but the buyer on the invoices was listed as the defendant. On 1st July, 2015, Mr. Kiernan informed Revenue officials that he had provided his VAT number to the defendant in connection with the intended purchase of one vehicle only and that the other twenty-four purchases referred to above were made using his company's VAT registration number without his knowledge or consent.
23. Further investigations carried out by Mr. Magee had revealed that a bank account in the name of "David Brady and Springboard Mortgage Limited", bearing account number 10721105985260 had been opened at the Ballyconnell branch of Ulster Bank in July 2015. "David Brady and Springboard Mortgage Limited" was a company that had been incorporated in the UK on 15th July, 2015. It was dissolved on 20th December, 2016. One Thomas Zieba, who was an employee or agent and associate of the defendant, was the sole director and shareholder of the company. The company had its registered office at 34 Kellier Park, Derrylin, Enniskillen, Co. Fermanagh, which was two doors from number 32 Kellier Park, which was the defendant's address while he was residing in Northern Ireland between August 2010 and June 2016.
24. Mr. Magee averred in the grounding affidavit that a lodgement of €90,000 had been made to the Ulster Bank account of "David Brady and Springboard Mortgage Limited" on 4th August, 2015 by cheque dated 21st March, 2015. The cheque had been drawn on an account of FBD Insurance plc and had the defendant's mobile number written on the back of it. He further stated that on 21st August, 2015, a payment of €25,000 had been made from the account to Mr. Frank Greene, an auctioneer with a previous connection to the defendant. On 21st August, 2015 and 24th August, 2015, two payments of €25,000 each were made to Gerard McVey, a motor dealer based in Northern Ireland. He exhibited a

copy of the cheque and the statements in relation to the Ulster Bank account of "David Brady and Springboard Mortgage Limited".

25. Mr. Magee went on to state that it was the view of the Revenue Commissioners that the property had in fact been purchased by the defendant from profits of his undisclosed car sales business, with the intention of moving his motor trade business, or part of it, to a new premises and that he had arranged to have the property registered in the name of the notice party, in order to conceal his involvement in the transaction and in an effort to keep the property out of the reach of his main creditor, the Revenue Commissioners. Mr. Magee stated that it was the belief of the Revenue Commissioners that the defendant was the true beneficial owner of the property comprised in folio 3048, County Cavan.

The Notice Party's Response.

26. In response to the assertions made by the plaintiff in his grounding affidavit, the notice party submitted that the property had been purchased by her from her own funds. In her first affidavit sworn on 7th August, 2019, she averred that the purchase price had been amassed by her from four different sources: her earnings from her position as an office administrator with P. Hart & Co. in the years 2011/2012, for which she was paid €700 net per week; her earnings from her fulltime employment by G. Motor Sales Limited as a manager between August 2014 and June 2016, for which she was paid €500 per week; rental income from a property that she owned; the child benefit allowance that she received in respect of her four children; the profit that she had made on the sale of a

Second Affidavit on Behalf of the Plaintiff.

27. Those assertions were challenged in the second affidavit sworn by Mr. Magee on behalf of the plaintiff on 11th September, 2019. In that affidavit, he pointed out that no tax returns had been filed on behalf of the notice party at any stage.
28. Insofar as the plaintiff had exhibited a P.60 in respect of her employment with Kaness of Granard Limited for the year 2010, Mr. Magee stated that the provenance of that document was unknown. The document did not match any records held by the Revenue Commissioners. He stated that the document could not be correct. A receiver had been appointed over the company in May 2009. During the receivership, the company had continued to sell vehicles at the garage premises until in or about September 2009, after which it ceased trading. He stated that the notice party could not have received €23,548.80 from the company in 2010, as it had ceased trading in the previous year. That was borne out by the fact that Dr. Michael Grimes had filed a "nil" P.35 (employer annual return) on behalf of the company on 23rd January, 2013. He exhibited a copy of the relevant P.35.
29. In relation to the plaintiff's employment by P. Hart & Co, Mr. Magee stated that records held by the Revenue Commissioners showed that the notice party had been employed by that company for a period of only five months between 10th January, 2011 and 10th June, 2011. Her salary had been paid into her AIB bank account. The copies of bank statements that had been exhibited by the notice party in her affidavit, revealed eighteen payments in the sum of €700, each referable to P. Hart & Co in a total amount of

€12,600. The first of those payments had been made on 14th February, 2011, with the last being made on 13th June, 2011.

30. Mr. Magee pointed out that on 11th February, 2011, the balance in the notice party's AIB account was €3,766.73. When she finished working for the company in June 2011, the balance stood at €1,492.41. Mr. Magee stated that it was clear from the transactions shown on the account between February 2011 and June 2011, that the notice party's salary was used entirely to defray the ordinary day-to-day living expenses of her and her family and that none of her salary was accumulated as savings. He stated that the total expenditure from the account during the period 11th February, 2011 to 24th June, 2011 was €16,134.98, which was in excess of the monies lodged to the account during the same period. By 24th June, 2011, the balance on the AIB account was in the sum of €391.05. He stated that it was evident from a perusal of the AIB bank statements, that no savings had been accumulated by the notice party out of the salary that she had received while employed by P. Hart & Co. No AIB bank statements had been furnished by the notice party for the period 24th June, 2011 to 1st April, 2014. However, it was clear that there had been no accumulation of savings in the AIB account during that period, because the opening balance on 1st April, 2014 was €49.68.
31. Mr. Magee went on to deal with the notice party's employment by G. Motor Sales Limited at paras. 16-26. The notice party had claimed that she had been employed on a fulltime basis by that company as a manager, for which she was paid approximately €500 per week, of which she stated that half had been paid to her every month by cheque, which she had lodged to the AIB account and the other half was paid to her in cash. She stated that on occasion, the entire monthly salary of €2,000 was lodged to the AIB account.
32. Mr. Magee stated that G. Motor Sales Limited was a company that had been incorporated on 10th March, 2014. Its directors were Dr. Michael Grimes, with an address in County Cork and one Maria Theresa Cassar with an address in Malta. In correspondence which had passed between Dr. Grimes and the Revenue Commissioners concerning the failure by the company to file proper VAT and PAYE returns for the period March 2014 to February 2015 inclusive, Dr. Grimes had stated that *"The company was not in business during the period in question, which was solely to [sic] your failure to register the company for taxes"*. In subsequent correspondence he had stated *"Now first and foremost because I would have been trading illegally I did not commence business until February 1st, 2015"*. Copies of this correspondence was exhibited to Mr. Magee's affidavit. He stated that it was difficult to see how the notice party could have been employed as a fulltime manager by the company from August 2014, if in fact the company did not commence business until 1st February, 2015.
33. Mr. Magee pointed out that on 30th April, 2015, the company filed a "nil" VAT return for the period March 2014 to December 2014, which indicated that it did not commence trading until early 2015. The company then filed VAT returns showing trading activity from early 2015 to October 2015, followed by "nil" or "no trading" VAT returns for all later periods.

34. Mr. Magee stated that according to records held by the Revenue Commissioners, there were only two persons registered as employees of the company, a Mr. Plunkett and a Mr. Rogers. The notice party was never registered with the Revenue Commissioners as an employee of the company.
35. He stated that in the twenty-three month period between August 2014 and June 2016, during which time the notice party claimed to have been employed by the company, the company made the following P.30 returns: a P.30 for August 2014 showing a liability of €416; the company filed "nil" P.30s for the seven months between September 2014 to March 2015 inclusive; the company filed payable P.30 returns between April 2015 and September 2015 inclusive, showing a total liability of €3,478, being €580 per month; the company filed no P.30 returns at all for the nine months between October 2015 to June 2016 inclusive.
36. Mr. Magee stated that the P.30 returns filed by the company between August 2014 and June 2016, were entirely inconsistent with the notice party's claim that she was being paid €2,000 per month by the company during that period. He went on to state that a receiver was appointed by the High Court in October 2016 over a fleet of vehicles situate at "Kanes of Granard" in Barrack Street, Granard, County Longford, which were owned by the defendant. The receiver recovered various records kept by G. Motor Sales Limited, including a manual ledger of its business bank account held with Permanent TSB. The ledger covered the period 10th February, 2015 to 8th June, 2016. It disclosed only six payments to the notice party by the company during that period in a total sum of €6,500.
37. The receiver also obtained a cash ledger which covered the period 28th February, 2015 to 11th February, 2016. It revealed that while cash payments were made by the company in the total sum of €66,240.11; no cash payments were recorded as having been made to the notice party. The records were exhibited to the affidavit sworn by Mr. Magee.
38. On the basis of the returns made by the company to Revenue and the records of the company recovered by the receiver, Mr. Magee stated that his belief was that it was clear that the notice party was not in fact employed fulltime as a manager by G. Motor Sales Limited between August 2014 and June 2016. Her claim that she was paid €500 per week by the company during that period, was not supported by any of the documentary evidence available.
39. Mr. Magee went on at paras. 27-32, to carry out an analysis of the AIB bank statements that had been furnished by the notice party. He noted that these records were incomplete, in that the notice party had not provided any statements in respect of the account for the period from 25th June, 2011 to 31st March, 2014. In addition, in respect of the period from 1st April, 2014 to 1st February, 2016, statements were missing for periods totalling over three months. No statements had been furnished for any periods after 1st February, 2016.
40. It was pointed out that the statements, that had been exhibited by the notice party, showed that between 6th August, 2014 and 1st February, 2016, there were only thirteen

lodgements made into the account. It was apparent therefrom, that many of the lodgements were made to defray a particular expense immediately afterwards. He gave a number of examples where lodgements had been made, which were then followed by payments out to cover such things as motor tax, electricity bills and school bills. Only two of the thirteen lodgements appeared to correspond with payments made to the notice party from G. Motor Sales Limited; namely a payment of €500 on 20th October, 2015 and €1,000 on 14th January, 2016. The total of all thirteen lodgements made into the AIB bank account between 6th August, 2014 and 1st February, 2016, was in the sum of €6,643. It was pointed out that if the notice party's account of her employment by the company were true and accurate, and in particular, her claim that she was paid €250 per week by cheque paid into her bank account, there would have been somewhere in the region of €18,000 in cheques alone, lodged into the AIB bank account during that eighteen-month period.

41. Mr. Magee stated that all of the monies lodged to the AIB bank account during that period, were used to defray the ordinary routine living expenses of the notice party and her family. The payments made out of the account during the same period came to a total of €7,071.
42. He pointed out that on 20th October, 2015, shortly before the closing date of the contract for the purchase of the property, the balance in the AIB account was only €693.83. The notice party had not exhibited any statements of the AIB account for the period from 21st October, 2015 to 30th November, 2015. The balance in the AIB account never exceeded €1,300 in all of the bank statements disclosed by the notice party for the period between August 2014 and February 2016. Mr. Magee stated that there was no evidence of any accumulation of savings in the account throughout the entire period. On this basis, he stated that the claim made by the notice party that she was earning €500 per week from G. Motor Sales Limited between August 2014 and June 2016, was not supported by, or corroborated by the bank statements she had chosen to exhibit. He stated that when considered in the context of the Revenue returns made by the company and the records of payments kept in its ledgers, the claim made by the notice party was not credible.
43. Mr. Magee went on to deal with the rental income and child benefit payments which were said by the notice party to be a source of some of the funds used to purchase the property. She maintained that she had received a small amount of income from a rental property, which she claimed to have lodged to her Ulster Bank account and to have received between €520 and €540 per month, in child benefit payments, which was paid directly into her Ulster Bank account.
44. Mr. Magee noted that the notice party had not given any details about the nature and extent of the rental income in her affidavit. However, in an affidavit sworn by her on 13th February, 2017 in other proceedings, she had stated that she was renting out a property at Cartron, Granard, County Longford. She had stated that the property had been rented out to a Mr. & Mrs. Blyzien for €550 per month between 2012 and October 2014; thereafter it had been rented to a person called Raimis or Raymond, also for €550 per

month. In that affidavit, she had claimed that the rental income had been lodged to her bank account to pay the mortgage over the property. The affidavit sworn by the notice party on 13th February, 2017 was exhibited to the affidavit.

45. Mr. Magee went on to note that some bank statements from the Ulster Bank account had been exhibited by the notice party in her affidavit sworn on 13th February, 2017. These showed that in September/October 2011, the monthly mortgage repayments on the rental property were €1,222.58. A letter which was also exhibited to that affidavit from Ulster Bank dated 2nd February, 2017 indicated that the mortgage account was in arrears in the sum of €6,357.84. On the basis of the figures given by the notice party, it appeared that the mortgage repayments over the five years 2012 to 2016 inclusive, must have been in the region of €66,962, whereas the rental income for the same period was only €33,000 leaving a shortfall of €33,962. Mr. Magee stated that it was clear that the notice party could not have accumulated any savings from this source, that could have funded or part-funded the purchase of the property.
46. Mr. Magee noted that in a further affidavit sworn by the notice party on 6th March, 2017, she had stated that she had made every single mortgage repayment on the property. He stated that it was difficult to see how that averment could be true, if there was a shortfall of €33,962 between the rental income derived from the property and the mortgage repayments required to be made to Ulster Bank. He stated that that averment could only be true, if the notice party was in fact supplementing the rental income from the property with income from other sources that she had not disclosed. He stated that it seemed likely that in fact, the shortfall between the rent and the mortgage repayments, had been made up by monies derived out of the business carried on by the defendant, rather than out of the means and resources available to the notice party in her own right.
47. Mr. Magee further stated that in support of her claim, the notice party had furnished incomplete statements relating to the Ulster Bank account into which the child benefit payments were lodged and into which she claimed that the rental income had been lodged. She had not exhibited any statements prior to 14th July, 2014. The first statement exhibited, commenced on 14th July, 2014 and the last statement ended on 4th January, 2016, a period just short of one year and six months. Statements for periods totalling nine months within that period, had not been exhibited by the notice party.
48. It was noted that lodgements into the Ulster Bank account in the periods covered by the statements that had been exhibited, came to a total of €19,610. That was made up of child benefit payments in the sum of €4,260; eighteen cash lodgements of varying amounts totalling €13,768; two payments specifically identified as rental income totalling €1,100 and miscellaneous credits of €482. He stated that it was striking that only two lodgements of €550, being the amount of the monthly rent, appeared in the bank statements that had been exhibited.
49. Mr. Magee stated that even a quick perusal of the incomplete statements, disclosed that there was never any accumulation of savings in the Ulster Bank account that would have been sufficient to enable the notice party to acquire the property. In fact, between 13th

November, 2015 and 20th November 2015, when a payment of €15,000 must have been made to Brady Solicitors to fund the acquisition of the property, the balance on the Ulster Bank account fluctuated between €424.93 and €57.06. He noted that similar to the AIB account, all of the payments out of the Ulster Bank account, apart from the mortgage repayments totalling €4,850, appeared to have been made to defray routine day-to-day living expenses and household bills.

50. Having regard to these matters, Mr. Magee stated that it was quite clear that none of the four sources of income cited by the notice party, were in fact used by her to accumulate any savings which could have funded the acquisition by her of the property.
51. Mr. Magee stated that having regard to the documentation which had been exhibited by the notice party from the solicitor who had acted for her in relation to the purchase of the property, it merely indicated that a deposit of €4,200 and a "payment on account" of €25,000, were both received sometime prior to 13th November, 2015, and that €15,000 had been received between 13th November, 2015 and 20th November, 2015. Mr. Magee stated that the notice party had failed to adduce any evidence of the accumulation of any savings, which could have been used to generate the sums of €4,200 up to 13th November, 2015 and a further €15,000 between then and 20th November, 2015, when it appears that the contract for sale was executed. He stated that it was entirely clear from the material that she had chosen to exhibit and rely upon, that the notice party did not have sufficient income to generate savings of any such magnitude. What means she did have, had been used entirely to defray the ordinary routine living expenses of herself and her family in the period leading up to November 2015. He stated that the notice party could not show where the purchase price for the property could have come from, nor could she point to any account in which such funds had been lodged or accumulated through savings.
52. Mr. Magee went on at paras. 47 et seq to deal with the assertion made by the notice party that she had made considerable profit from the sale of a tractor. He noted that there was nothing in the records held by the Revenue Commissioners to indicate that the notice party had never been the owner of a tractor. Between 26th October, 2010 and 26th October, 2017, she had been registered as the owner of eleven different imported motor vehicles, but none of those vehicles was a tractor.
53. He noted that as of the date of swearing that affidavit, the notice party had failed to provide any details of the tractor sale, such as the registration number of the tractor in question, the name of the person to whom it had been allegedly sold, the date of the sale, a copy of any invoice, receipt or other sales document, nor any information as to how she came into possession of a tractor, nor had she furnished the identity of the supplier, the price paid by her for the tractor, or how its purchase was funded by her. He noted that none of the bank statements that had been exhibited by the notice party, disclosed any sum relating to either the purchase, or the sale of the tractor. Furthermore, Mr. Magee noted that in a letter dated 5th December, 2017 from the solicitor who had formally acted for the defendant, there was no mention of the sale of any tractor. The solicitor had

merely stated in his letter that the property had been purchased by the notice party "using her existing savings".

54. Mr. Magee went on to set out his belief as to the true source of the funds that were used to purchase the property. In this regard, he repeated the assertion that the funds had been provided by the defendant via the company known as David Brady and Springboard Mortgage Limited. In this regard, of specific relevance was the fact that the company's bank account, was the only bank account from which payments were made that were consistent with the payments that were required to purchase the property. In particular, a sum of €5,000 had been withdrawn in cash on 20th August, 2015 from which the contractual deposit could have been paid. A sum of €25,000 had been paid out of the account on the following day to a Mr. Frank Greene, who was an auctioneer, with a previous connection to the defendant.
55. Mr. Magee stated that the first of the payments out of the account of €5,000 was sufficient to discharge the contractual deposit on the property and the €25,000 that was paid on account in addition to the deposit, was most likely one and the same as the payment made to Mr. Greene, out of the company's account and that it was not in fact generated by the sale of a tractor by the notice party, as she had claimed. He went on to state that other debits from the company's account (cash of €3,000 and a cheque which was encashed at a Bureau de Change in the sum of €4,550, both on 27th August, 2015) may have also formed part of the balance of €15,000 that was used to fund the purchase of the property and he exhibited a copy of the relevant cheque.
56. In conclusion, Mr. Magee stated that while the property had been registered in the name of the notice party, there was no evidence to suggest that she had sufficient income, means or resources to fund the acquisition of the property. He submitted that it was evident from the material that she had exhibited, that she had never been in a position to accumulate even the relatively modest savings that would have been needed to fund the contractual deposit of €4,200 to buy the property. Her claim to have realised €25,000 through the sale of a tractor, was entirely unsupported and uncorroborated and had been advanced for the first time in her affidavit sworn on 7th August, 2019.

Second Affidavit on Behalf of the Notice Party.

57. In response to the affidavit sworn by Mr. Magee, the notice party swore a further affidavit on 6th November, 2019. In that affidavit, she stated that her non-filing of any tax returns in the years 2011 and 2015, did not entitle Mr. Magee to infer that she lacked the means to purchase the property. She stated that she had been a PAYE worker employed by P. Hart & Co. However in this regard, her previous averment in relation to the duration of that employment had been incorrect; she stated that she had been employed by the company in 2011 only.
58. The notice party went on to set out her connection to another company, being LP Commercials Limited. She stated that she was the sole director of that company, which had been incorporated in England on 7th September, 2010. She stated that the company had commenced trading on or about the date of incorporation and had continued until

dissolution on 7th July, 2016. However, her involvement with the company ceased upon her resignation as director on 28th April, 2014.

59. The notice party stated that in the period 2010 to 2014, she received monies on an infrequent basis from the trading proceeds of LP Commercials Limited, which were lodged into her credit union account with Granard Credit Union Limited. She exhibited a copy of the credit union statement for the relevant period. She stated that she was in a position to avail of a small allowance from the trading profits of LP Commercials Limited to pay household bills during her time as a director of the company. The surplus was invested by her into assets, such as the tractor referred to in her previous affidavit. She stated that that account had been used to fund the purchase of a Steyr tractor from a Mr. Derek McConnell on or about 2nd August, 2011. In this regard she referred to a copy of a bank statement of the company dated 31st August, 2011, which demonstrated a transaction on 2nd August, 2011 in the amount of STG£6,300, referenced "Derek McConnell", which she exhibited to her affidavit.
60. The notice party stated that the Steyr tractor was subsequently sold on her behalf by Mr. Seamus Kane, who is now her brother-in-law and as a result of the proceeds of that sale, she came to own a Case JX95 tractor, which was later sold for €25,000 in or around Saturday 24th October, 2015.
61. The notice party stated that she recalled the date of sale of the tractor, because she photographed the vehicle *in situ* on that date, prior to sale. She stated that the proceeds were transmitted to her solicitor, Ms. Helena Brady and were included later in the statement of account furnished by her solicitor, which had been exhibited to her previous affidavit. The notice party exhibited a copy of the photograph that she had taken of the tractor on 24th October, 2015. She stated that she did not know who the buyer of the tractor was, as the sale had been arranged for her by Mr. Seamus Kane.
62. In relation to her employment by Kanes of Granard Limited, she stated that her understanding was that a receiver had been appointed over that company in the period 22nd May, 2009 to December 2009. In the period leading up to the cessation of trading by the company, its few employees, including the notice party, were paid their wages in cash. She stated that that explained the lack of detail contained in the filed P.60. It further indicated that Mr. Magee had underestimated the funds available to the notice party to purchase the property. She stated that she had endeavoured to give as accurate an account as possible of her earnings from the various relevant sources over the past decade. She stated that the savings used by her to purchase the property had been her own.
63. In relation to her employment by G. Motor Sales Limited, the notice party stated that while she may not have been registered with the Revenue Commissioners as an employee of that company, that was a matter that required to be addressed by Dr. Michael Grimes, a director of the company, whose letters had been relied upon by Mr. Magee in his supplemental affidavit. The notice party stated that she had been in receipt of income as a fulltime employee of the company for the period in question. The failure of Dr. Grimes

to register her employment, was not something for which she should be held responsible. She stated that she had given Dr. Grimes her PPSN upon commencement. She stated that this did not alter the fact that she had been in receipt of income from the company during the period August 2014 to June 2016.

64. The notice party further pointed out that the correspondence which had been relied upon between Dr. Grimes and the Revenue Commissioners, showed that there had been a fraught relationship between the Revenue Commissioners and Dr. Grimes, such that the court should not be expected to rely upon the content of such correspondence. Furthermore, in relation to the documents that had been filed by or on behalf of the company with Revenue, as set out in Mr. Magee's affidavit, the notice party stated that that was a matter for Dr. Grimes, as a director of the company. The documentation did not alter the fact that the notice party had been in receipt of income from the company during the period in question.
65. At para. 13 of her affidavit, the notice party agreed with the assertion made by Mr. Magee that many of the lodgements to her AIB account, had been made to defray specific expenses. However, as she had previously averred, she had access to other savings funds, which had accounted for her ability to purchase the property.
66. The notice party stated that the averments made by Mr. Magee in relation to the mortgage repayments had been inaccurate. She stated that the mortgage repayments had not remained static at €1,222.58 during the period 2012 to 2019 inclusive. In this regard she referred to a copy of an Ulster Bank statement dated 21st June, 2011, which showed fluctuation of repayment levels between 27th May, 2010 and 1st June, 2011 from €1157.34 per month to €1196.02 per month. She stated that the original mortgage had been provided by First Active Building Society, which had later been acquired by Ulster Bank.
67. The notice party stated that between 1st October, 2012 and 2nd October, 2019, repayments were made on the mortgage account. In 2012, the repayment level required was €700 per month, however she stated that she had made an agreement to reduce her payments to €637.50 per month until May 2013. Following that, between 2013 and 2014, the repayments made were infrequent, but averaged €500 per month. She stated that on occasions these payments were made bimonthly. She stated that the repayments increased to €700 and then €750 in 2014/2015. The latter payment was sometimes made bimonthly in the amount of €1500. She stated that at the time she was receiving €550 per month in rental income and the balance of monthly payments came from a variety of sources, that included monthly child benefit payments and salary from G. Motor Sales Limited. She exhibited a copy of a mortgage transaction summary dated 30th October, 2019.
68. The notice party stated that the current monthly repayment on the mortgage at the time of swearing the affidavit, was in or around €737 per month. She stated that she would typically pay €750 per month in a round sum, which was funded by a combination of rental income and €540 state benefit (HAP), which payments began in 2018. She stated

that the overall position with regard to the mortgage, was that it was no longer in arrears. She stated that it was her belief that Mr. Magee's incorrect understanding of the position regarding her repayment obligations explained, in part, his underestimation of her ability to fund the purchase of the property.

69. At para. 17 of her affidavit, the notice party accepted that her financial affairs were "in a somewhat haphazard state and that transactions are difficult to follow". She stated that that had to be seen in the context whereby her husband had been investigated by Revenue and had been found to owe approximately €5m in unpaid taxes. She stated that since that determination had been made, her family had been the subject of an aggressive campaign of investigation, litigation and demand from the authorities within Revenue. She stated that some of the actions of Revenue had been particularly aggressive. All of that had created a great deal of pressure on her and on her four children, some of whom had been quite young when matters with the Revenue first commenced. She stated that it had not been easy to maintain her affairs in an organised, streamlined manner, particularly during periods of great stress and pressure, as a result of the litigation commenced by Revenue. However, she stated that she had had the means to purchase the property and that she had used her own resources to do so.
70. The notice party stated that much of what had been deposed to by Mr. Magee in his affidavits, was based wholly on conjecture. She stated that many of his conclusions had been made without justification and reflected the prejudice with which he had viewed her financial capacity, based on his investigation into the conduct of the defendant in these proceedings. She stated that the averments that had been made by Mr. Magee on behalf of the plaintiff were so speculative as to be without substance. She repeated that she had had the financial capacity to purchase the property herself and that she had done so.

Third Affidavit on Behalf of the Plaintiff.

71. The final affidavit sworn in these proceedings, was the supplemental affidavit sworn by Mr. Magee on 28th November, 2019. In addressing the alleged sources of the funds used by the notice party to purchase the property, Mr. Magee noted that the total sum paid to the notice party by P. Hart & Co was €12,600, which was all lodged to her AIB account. He had pointed out that expenditure from that account on day-to-day living expenses during the period of her employment with the company, had been €16,134.98, so the notice party could not have accumulated any savings out of her salary for that period of employment that would have contributed towards the acquisition of the property in or about October/November 2015.
72. He reiterated the points that he had made in his previous affidavit about the payments received by the notice party from G. Motor Sales Limited. An analysis of the AIB bank statements, that had been exhibited by the notice party, showed that there had only been two payments to her from that company and that there had been no accumulation of savings, either from salary payments made by G. Motor Sales Limited, or any other source. In fact, on 12th October, 2015, when the sum of €4,200 would have been payable as a contractual deposit for the purchase of the property, the balance in the notice party's AIB account was only €75.85. That balance grew to €695.83 on 20th October, 2015.

73. Mr. Magee reiterated that insofar as the rental income from the bungalow property at Cartron and the child benefit had been paid into her Ulster Bank account, the evidence disclosed that they were withdrawn again to discharge the monthly mortgage repayments in respect of the property and routine living expenses. They could not have been used to accumulate any savings. The bank statements that had been exhibited by the notice party in respect of her Ulster Bank account, did not show any accumulation of savings. On 20th November, 2015, when the final payment was made by Messrs Brady, Solicitors in respect of the property, there was only €57.06 available in the Ulster Bank account.
74. Mr. Magee went on to deal at some length with the company, LP Commercials Limited, which had been introduced for the first time by the notice party in her second affidavit. He stated that he was surprised that the notice party had failed to mention either LP Commercials Limited, or her credit union account, in her previous affidavit, if that had been a real and bona fide source of income from which she was able to fund the purchase of the property.
75. Mr. Magee noted that LP Commercials Limited had been incorporated in the United Kingdom a number of weeks after the defendant had absconded from this jurisdiction to avoid a warrant for his arrest that had been issued by Kelly P. in the High Court. The sole director and shareholder of LP Commercials Limited, from incorporation to 1st January, 2014 was the notice party. On the certificate of incorporation in respect of the company, her country/state of usual residence, was given as "County Fermanagh" and her address was stated as "203 Tonyloman, Bellinaleck, County Fermanagh, Northern Ireland BT92 2EE". Mr. Magee went on to state that the notice party never resided at that address. That was an address at which the defendant had resided between September 2010 and November 2011. He had taken a lease of that property on 3rd September, 2010 following his move to Northern Ireland to avoid the arrest warrant issued against him in late July 2010. Mr. Magee noted that the defendant had used the same address on a Northern Ireland driving licence and the defendant had exhibited a copy of the lease and the driving licence in his application to the High Court of Northern Ireland in March 2013, during a failed attempt to have himself adjudicated as a bankrupt in that jurisdiction. Mr. Magee exhibited a copy of the lease and the driving licence.
76. Mr. Magee stated that LP Commercials Limited was never registered for any tax in this jurisdiction. It was however, registered for VAT in Northern Ireland. The address given to HMRC for VAT purposes was "32 Kellier Park, Kilnakelly, Derrylin, Enniskillen, County Fermanagh, BT92 9DX". Mr. Magee stated that he believed that the notice party never resided at that address. It was the address of the defendant between November 2011, when he took out a lease of the property and June 2016, while he resided in Northern Ireland. It was also the address disclosed by him to the High Court in Belfast during his two failed attempts to have himself adjudicated a bankrupt.
77. Invoices issued by the company disclosed that it had a business address at "Corravehy, Kinawley, Enniskillen, County Fermanagh". Mr. Magee stated that to the best of his knowledge, the notice party never worked at that address. However, that was the address

of a garage premises situated near Derrylin in County Fermanagh, from which the defendant traded in the period between August 2010 and June 2016. A telephone number on the company's invoices was in fact the telephone number used by the defendant while he was resident in Northern Ireland. That number had been disclosed by him to the High Court in Belfast during the course of his application to have himself adjudicated as a bankrupt in Northern Ireland. He exhibited a copy of an invoice dated 3rd April, 2012 from LP Commercials Limited.

78. Mr. Magee stated that all of the trading and tax indicia of LP Commercials Limited, were connected solely to the defendant and not to the notice party.
79. Mr. Magee went on to outline a number of activities carried on by LP Commercials Limited, which had been designed to avoid the payment of VAT in this jurisdiction. On 22nd February, 2012, a company called Kelly's Sales and Service (Donegal) Limited, which was based in Letterkenny, County Donegal, sold two motor vehicle to LP Commercials Limited for €16,260 each. Kelly's subsequently advised the Revenue Commissioners that they dealt with a Derek McConnell of Trory, Enniskillen, County Fermanagh and that they had understood that he was the agent acting for and on behalf of LP Commercials Limited. Mr. McConnell had advised Kelly's that the vehicles were to be exported to Northern Ireland and for that reason, they did not charge any VAT on the transaction. In fact, the Revenue Commissioners ascertained that both vehicles were sold on by LP Commercials Limited in this jurisdiction and no VAT was paid by the company in respect thereof. Mr. Magee exhibited two invoices dated 23rd February, 2012 numbered 12002 and 12003 respectively from Kelly's Sales and Service (Donegal) Limited to LP Commercials Limited, with a purported business address (for VAT "zero-rating" purposes) in Northern Ireland at "203 Tonyloman".
80. Mr. Magee went on to state that one of the vehicles, bearing registration number 09 KE 2872, was purportedly sold by LP Commercials Limited to Brean Kane Motors Limited, a company owned and operated by a brother of the defendant. No VAT had been accounted for by LP Commercials Limited in respect of that transaction.
81. The second vehicle, bearing registration number 09 KE 2871, was sold from a garage premises known as "Kanes of Granard" to Geraldine McDonald of Kildare Town, for a price of €4,000, net of an allowance for a trade-in. No VAT was accounted for by LP Commercials Limited in respect of that transaction. In a letter dated 21st December 2012, Ms. McDonald informed a Revenue official that she had purchased the vehicle from LP Commercials (Kane's). She stated that she had dealt with "Paurig" and "Mark". Mr. Magee stated that he believed that these were references to Padraig Kane, a brother of the defendant and their associate, Mark Berrigan. He stated that the notice party was not involved in the transaction. He exhibited a copy of the letter that had been received from Ms. McDonald explaining her part in the purchase of the vehicle.
82. Mr. Magee stated that in September 2016 following the return of the defendant to this jurisdiction, it became apparent that LP Commercials Limited had been originally set up and was being administered by Dr. Michael Grimes, who also purported to represent the

defendant in his two failed bankruptcy petitions in Northern Ireland. In a letter dated 12th September, 2016, Dr. Grimes had stated "*We note, as it appears you are interested in Mr. Kane, that his partner Lucy Pinfold sold the company on 31st December, 2013.*"

83. Mr. Magee stated that it was his belief that LP Commercials Limited was set up in September 2010 by Dr. Michael Grimes as a front company to conceal the ongoing trading activities of the defendant. Although the defendant had absconded to Northern Ireland, he continued to carry on a motor sales business both north and south of the border, but his activities were carried on behind the cover of a number of front companies, which had been established for that purpose by Dr. Michael Grimes and also for the purpose of facilitating illegal "zero-rate" VAT transactions, such as the purchase of the two vehicles from Kelly's Sales and Services (Donegal) Limited. Mr. Magee stated that it was his belief that the notice party was a director and shareholder of LP Commercials Limited in name only. She did not appear to have had any active part in the operation of the company. He stated that it was operated at all times by the defendant, with the assistance of his brother, Pdraig Kane, and their associate Mark Berrigan and a Patrick Plunkett, who was a former employee of the defendant.
84. Mr. Magee noted that at para. 6 of her second affidavit, the notice party claimed that she was able to avail of "a small allowance from trading profits" of LP Commercials Limited to pay household bills during her period as a director of the company. She then claimed that a surplus was invested into assets. He stated that he had carried out an examination of the abbreviated financial statements of LP Commercials Limited, that were filed by the company with the relevant authorities in the United Kingdom for the year ending 30th September, 2011 and the year ending 30th September, 2012. He exhibited a copy of those accounts.
85. Mr. Magee stated that as could be seen from the summary of the accounts, the total of director's drawings from LP Commercials Limited for those two years, was in the sum of STG£4,772 (£2,559 in 2011 and £2,213 in 2012).
86. In support of her contention that she had been in a position to avail of a small allowance from the trading profits of the company to pay some household bills, the notice party had exhibited a Northern Bank statement for one month only, being August 2011. Apart from the payment to Mr. Derek McConnell of £6,300 on 2nd August, 2011, there were approximately twenty-eight debit card, or point of sale, transactions recorded on the statement of account, to a total value of approximately SGT£2,900. Most of the transactions appeared to have taken place in and around the Derrylin or Enniskillen areas, where the defendant was residing and conducting business, which would suggest that they were made by or on behalf of the defendant and not the notice party. He noted that one particular debit in favour of a dental clinic, had been referred to by the defendant in an affidavit sworn by him in March 2013 in the course of his proceedings before the High Court in Belfast.
87. Mr. Magee stated that it was difficult to see how any modest allowance that may have been drawn on the company account of LP Commercials Limited in August 2011, could

have been used by the notice party to accumulate savings sufficient to purchase the property for €42,000 and associated costs, over four years later. She had chosen not to exhibit any other bank statements in relation to the bank account held by the company with Northern Bank. The accounts of the company filed with the relevant authorities in the UK, did not disclose payments for or on behalf of the director of the company.

88. In relation to the claim made by the notice party that she received irregular payments into her credit union account from LP Commercials Limited in the period 2010 to 2014, Mr. Magee pointed out that it was apparent from the statements that the notice party had chosen to exhibit, that the last transaction on the credit union account was 8th April, 2014, when a sum of €1,400 had been withdrawn. The balance at that stage was €14.09. There were no further lodgements and there was no evidence on a perusal of the copy statements furnished by the notice party, of any accumulation of savings such as would have enabled her to purchase the property in October/November 2015.
89. Mr. Magee stated that he had examined the copy credit union statements, from which it appeared that there was a total sum of €54,948.57 lodged into the account between 6th August, 2010 and 19th March, 2014. He set out the dates and amount of lodgements in tabular form at para. 40 of the affidavit. He stated that the extent of the money lodged into the credit union account in the two-year period to September 2012 of €53,835, was not consistent with the level of director's drawings recorded in the accounts of LP Commercials Limited, which was in the sum of only STG£4,772.
90. Mr. Magee stated that that sum of money could not have been paid to the notice party as salary either, because the profit and loss account for year ended 30th September, 2012, showed the company to have incurred total administration costs in respect of all running expenses and overheads, in the sum of only STG£16,856. Moreover, neither the notice party, as director/employee, nor LP Commercials Limited, as company/employer, had made any tax returns disclosing the payment of any salary, remuneration, allowances or benefits to the notice party.
91. Mr. Magee stated that there was no evidence that the sums lodged in the notice party's credit union account were derived from LP Commercials Limited in any conventional or legitimate way. There was no correlation whatsoever between the sums disclosed in the credit union statement of account and the filed company accounts of LP Commercials Limited. He stated that if the sums lodged into the notice party's credit union account were not director's drawings from the company and were not salary or remuneration from the company, the only plausible explanation for the source of the funds was that the monies were the proceeds of motor sales carried out by the defendant, which were lodged in the credit union account of the notice party in order to conceal their true source and origin.
92. Mr. Magee stated that it was apparent that the funds lodged to the credit union account, were used in part to fund the purchase of more motor vehicles and in part, to discharge the personal living expenses of the notice party and her family. He went on to set out a number of payments that had been made to a named firm of motor dealers in Lucan and

other payments that had been made to the secondary school attended by the notice party's children. He went on to outline the remaining withdrawals from the credit union account, most of which were made to the notice party, and came to a total of €31,370.

93. Mr. Magee stated that the credit union statements did not establish or support the suggestion made by the notice party that she had accumulated any savings out of monies paid to her from LP Commercials Limited and lodged to her credit union account. As noted, there had been no further lodgements made into the account after April 2014. There was no evidence of the accumulation of any fund, or funds sufficient to have enabled the notice party to fund the purchase of the property and associated costs, in her own right.
94. Mr. Magee went on to deal with the alleged profits made by the notice party from the sale of a tractor. She had stated that on 2nd August, 2011 she had purchased a Steyr tractor from Derek McConnell for the sum of STG€6,300. In that regard she had referred to a statement from Northern Bank in respect of an account held by LP Commercials Limited, which disclosed a payment to Mr. McConnell. Mr. Magee stated that if the tractor had been bought from Mr. McConnell by LP Commercials Limited, using money drawn from its company account, then it was in fact an asset of the company and not a personal asset of the notice party. There was no explanation as to how the tractor came to be a personal asset of the notice party. If the company asset had in fact been transferred to the notice party, the value of the asset would have been recorded as a director's drawing in the company accounts, but the accounts for the year ended 30th November, 2011 disclosed director's drawings in the sum of only STG€2,559.
95. Mr. Magee stated that the notice party had further claimed that the Steyr tractor was sold by her brother-in-law, Seamus Kane, at some unspecified point in time and as a result of this transaction, she "came to own" another tractor, a "Case JX95". It was entirely unclear how the notice party simply "came to own" another tractor following the sale of the original Steyr model.
96. Mr. Magee pointed out that remarkably, the Case JX95 tractor must have rapidly appreciated in value, because the notice party claimed that it was sold in turn, again by Mr. Seamus Kane on her behalf, to an unknown purchaser on 24th October, 2015 for €25,000. Mr. Magee stated that that account was entirely uncorroborated by the notice party. No documents or records had been exhibited by her in support of her claim. There were no invoices, no cheques, no vehicle registration certificates, or any other documents furnished by her to support her claim to have more than tripled her initial "investment". As previously stated, no tractor had ever been recorded as being in the registered ownership of the notice party in the records held by the Revenue Commissioners, which were based on records of the Department of Transport, Tourism and Sport.
97. He noted that the only exhibit relied upon by the notice party to corroborate her claim to have owned the tractor, was a photograph of a Case JX95 tractor, that she claimed was taken "*in situ*" on 24th October, 2015, prior to its sale. She did not explain where the

tractor actually was when it was photographed; nor had she explained why she was taking a photograph of the vehicle on the day that it was about to be sold.

98. Mr. Magee stated that he had examined the photograph and was satisfied that it was a photograph of a Case JX95 tractor, that had been taken in the forecourt of "Kanes of Granard" garage premises at Granard in County Longford. He noted that the Facebook page formerly operated by that entity, contained the same photograph of the same tractor in an advertisement. It appeared that the tractor was being advertised for sale by "Kanes of Granard" on 25th October, 2015. He exhibited a copy of the advertisement as appearing on the Facebook page.
99. Mr. Magee stated that on 17th October, 2013, Cheffins (Cambridge Machinery Sales) Limited in the United Kingdom had supplied a Case JX95 tractor to "J Kane (Cartron, Granard)" for the sum of STG£15,200. The invoice from Cheffins recorded the tractor has having "1700 hours". He exhibited a copy of the relevant invoice.
100. Mr. Magee went on to state that his belief was that the tractor that was referred to by the notice party in her affidavit and shown in the photograph, which was exhibited by her, was one and the same as the tractor purchased by the defendant from Cheffins in 2013 and that was later advertised for sale on the Facebook page of Kanes of Granard on 25th October, 2015.
101. Mr. Magee went on to state that his belief was that on 20th September, 2015, Mr. Seamus Kane, who was supposed to have sold the Case JX95 tractor on behalf of the notice party, in fact sold a Case MXU100 tractor registration HF53 MYX to a Mr. Patrick Nannery for €17,200 net of a trade-in. The Case MXU100 tractor supplied to Mr. Nannery by Seamus Kane, had been purchased by the defendant from Cheffins on 8th September, 2014. In this regard, Mr. Magee exhibited the copy invoice from Cheffins, the copy invoice from Seamus Kane to Pat Nannery and a copy printout of Revenue of the VRT details in respect of the Case MXU100 tractor.
102. Mr. Magee stated that he did not believe that the Case JX95 tractor referred to by the notice party, was in fact ever owned by her, or by LP Commercials Limited. He submitted that the vague narrative offered by the notice party, about buying and selling tractors that dramatically appreciated in value over time, was entirely uncorroborated, was inherently implausible and was factually untrue. Mr. Magee pointed out that the notice party had given a similar story about buying and selling cars, which appreciated greatly in value over time and that that had allowed her to amass some or all of the €300,000, which she alleged she had paid for the family home at Cartron; but that account had been rejected by the President of the High Court in the course of the proceedings relating to that property.
103. Mr. Magee stated that while there was no evidence to support the claim made by the notice party that she was involved in the buying and selling of tractors, there was ample evidence that the defendant had been actively involved in tractor sales as far back as 2009. Between 7th October, 2013 and 8th July, 2014, the defendant purchased 23

tractors or other agricultural machines from Cheffins in the United Kingdom. An account dated 7th July, 2014 obtained from Cheffins, showed that that company had purchased ten tractors from Ardnagullion Farm Machinery Limited for £31,095.60, net of a credit of £12,902.40. The credit of £12,902.40, related to the supply by Cheffins of a tractor on the same date to the defendant. Similar to LP Commercials Limited, Ardnagullion Farm Machinery Limited had an address at Corravey, Kinawley, County Fermanagh. It had the phone number of the defendant on its sales invoices. Ardnagullion Farm Machinery Limited was now dissolved, but its director was Dr. Michael Grimes. Mr. Magee stated that it was another of the sham companies used by the defendant as a front, behind which to conduct a covert trade in vehicles, tractors and farm machinery. In this regard, he exhibited the relevant documentation from Cheffins relating to the sales referred to in his affidavit.

104. Mr. Magee noted that while the notice party claimed that she had had the resources to purchase the property independently of any financial assistance provided to her by the defendant, and despite having sworn two substantial affidavits in the matter, there was still no evidence of any accumulation of savings, or any other assets that would have provided the notice party with enough money to be able to pay for the purchase of the property. It was quite apparent from the documentation that she had supplied in relation to her earnings from various employments, that these were insufficient to have allowed her to pay for the purchase of the property.
105. Mr. Magee went on at para. 66 *et seq* to deal with the issue of the notice party's employment with Kanes of Granard Limited. That employment had been considerably prior to the time of the purchase of the property. He noted that while the plaintiff had produced a P.60 for the year 2010, that could not be correct as the company did not carry on any trade during that tax year. It had filed a P.35 for that tax year, disclosing a "nil" return, meaning that it had no employees for that particular tax year. He stated that the provenance of the P.60 for 2010, that had been relied upon by the notice party, was unknown. He had checked against the records of the Revenue Commissioners and the copy P.60 did not match any record, or filing held by the Revenue Commissioners in relating to the tax affairs of the notice party, or of G. Motor Sales Limited. This led him to the belief that the document had been created for the purpose of corroborating the notice party's claim to have had an income from Kanes of Granard Limited in 2010, which was not in fact paid to her.
106. Mr. Magee noted that the notice party had agreed with his observation that many of the lodgements that had been made to her AIB account, appeared to have been used to defray specific day-to-day living expenses. She maintained that she had had access to "other savings funds", but those had not been identified. That also begged the question as to why she chose to exhibit bank statements from her AIB bank account, if in fact she now claimed that the funds used to purchase the property, had been derived out of some "other savings funds".

107. Mr. Magee stated that he had examined the additional details given by the notice party in her second affidavit in relation to the rental income and mortgage payments. He calculated that during the five years and six months between 1st June, 2010 and 30th November, 2015, mortgage repayments came to a total of €48,595 approximately. The rental income during the same period came to a total of €38,700, which left a shortfall of €9,895. While the notice party had suggested that she made up the difference out of her monthly child benefit payments and salary from G. Motor Sales Limited, according to the records of the company, her salary from the company did not commence until October 2015 and was negligible. In addition, Mr. Magee stated that his calculation of the shortfall of €9,895, did not take any account of expenditure that must have been required for the maintenance and upkeep of the rental property during the period in question. He stated that it was apparent that the rental income derived by the notice party could not have provided any surplus funds, out of which the acquisition of the property could have been paid for.
108. Mr. Magee stated that it was also clear that the child benefit payments, which were lodged to the Ulster Bank account, could not have been used to fund or part-fund mortgage repayments, as those and other sums were withdrawn again to defray routine day-to-day living expenses and household bills.
109. In conclusion, Mr. Magee submitted that there was no credible evidence before the court upon which it could reasonably conclude that the purchase price payable for the property, even excluding the amount payable as stamp duty, planning fees and construction costs, had been discharged by the notice party solely out of her own independent means and resources.

Submissions of the Notice Party at the Hearing in February 2022.

110. Finally, at the hearing of this application in February 2022, the notice party relied on the matters that had been set out in her two affidavits and made two further submissions: firstly, she stated that she had made an application for legal aid and according to her, that application had been granted by the Legal Aid Board. On that basis, she sought an adjournment of the hearing of the application. However, no documentation was furnished by her to substantiate her assertion that the Legal Aid Board had made a decision that she should be granted legal aid for the application.
111. Secondly, the notice party asserted that the plaintiff was estopped from denying that she was the true owner of the property, because in the previous enforcement proceedings relating to her family home at Cartron, they had indicated that she would not be destitute if an order for possession of the property was made, as she was the owner of the property, the subject matter of these proceedings. It was submitted that in these circumstances, the plaintiff could not have it both ways and they were bound by the representations that they had made to the High Court on a previous occasion in relation to her ownership of the property.

The law.

112. Section 28(8) of the Supreme Court of Judicature (Ireland) Act 1877 provides that a receiver may be appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made. The statutory provisions are replicated in O. 50, r. 6(1) of the Rules of the Superior Courts, which is in the following terms:

"The Court may grant a mandamus or an injunction or appoint a receiver, by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do."

113. Order 45, r. 9 outlines the matters which are to be considered when appointing a receiver by way of equitable execution: -

"In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if it shall so think fit, direct any inquiries on these or other matters, before making the appointment. The order shall be made upon such terms as the Court may direct."

114. The law in relation to the circumstances in which it is appropriate to make an order providing for the appointment of a receiver by way of equitable execution, was recently considered by the Supreme Court in *ACC Loan Management Limited DAC v. Rickard* [2019] IESC 29. In delivering the judgment of the court, MacMenamin J. concluded his judgment with the following observation at para. 84:

"The end point of the discussion returns to the starting point: the meaning of two words. I wish to re-emphasise, however, that what will be determined as being "just or convenient" in any one case remains a matter for a court to determine on the facts of each case. Like the courts in the latter half of the 19th Century, the courts now must be vigilant to ensure that the position of a judgment debtor is not rendered unsustainable by the making of such an order. That is a matter for judgment in each individual case. An onus will, therefore, lie upon a judgment-debtor to place full and candid evidence before the Court as to the effect which the appointment of a receiver will have upon him or her. It is an "evidence based" approach. A court will then be placed in a situation to determine whether or not a receiver should be appointed. "Convenience" cannot be subservient to justice. No evidence has been placed before the Court in this case that, in the sense of the provision and the Rules, the appointment would be "unjust". I would, therefore, uphold the judgments of the Court of Appeal, on the grounds set out in this judgment."

Conclusions.

115. It has been necessary to set out the evidence in this application in some detail, due to the fact that the notice party's account of the sources of her funds, which she maintained were used to purchase the property, shifted and new sources of income were added with the passage of time. In addition, more detail was provided by her from one affidavit to the next. As a result, the last affidavit sworn by Mr. Magee on behalf of the plaintiff, had to deal in some detail with the new position which had emerged from the notice party's second affidavit.
116. However, at the end of the day, the central issue in this application was whether the notice party had demonstrated that she was both the registered owner of the property, which was evident from the folio, and the beneficial owner of the property, in that she had provided the funds to purchase the property.
117. In this regard, the notice party maintained that she had accumulated savings sufficient to fund the purchase of the property and the ancillary planning application and the conversion works that were carried out on foot of the planning permission obtained from An Bord Pleanála. Thus, she had to establish that from her various sources of income, she had accumulated savings of at least €44,000 to fund the purchase of the property. That leaves aside the costs of obtaining planning permission and the cost of the conversion works.
118. Having considered all the evidence in this case, as set out earlier in this judgment, the court is not persuaded that the notice party accumulated any significant savings from her positions of employment with Kanex of Granard Limited, P. Hart & Co, G Motor Sales Limited, or from her directorship of LP Commercials Limited. The court accepts the evidence given by Mr. Magee in his affidavits that there was no evidence in the various bank statements that had been exhibited by the notice party, that the income which she received from these companies, either as employee or director, were sufficient to enable her to accumulate any significant savings, let alone savings of a sufficient amount to fund the purchase of the property.
119. In relation to the rental payments forming part of the funds used to purchase the property, the court prefers the evidence of Mr. Magee, that when one has regard to the level of the mortgage repayments which were due on the rental property, the rent therefrom would not even have covered the mortgage due on the property. Indeed, there would have been a shortfall of €9,895 in that regard. In relation to the child benefit payments, the court has to have regard to the fact that the notice party was supporting four children. The court is satisfied that there was no room for savings from the receipt of child benefit allowances, as the bank statements exhibited by the notice party show that these were used to cover the ordinary living expenses of the notice party and her children.
120. The court does not accept the evidence of the notice party that she managed to accumulate the sum of €25,000 from the sale of a tractor. Her evidence in relation to the purchase of the initial tractor and thereafter, selling it on and purchasing a second tractor for an undisclosed amount and then selling that on and making a profit of €25,000, is not

credible. There is no evidence to show how there could have been such an appreciation in value on the sale of the two tractors to allow for the accumulation of such a profit.

121. In addition, the court is satisfied from the matters set out by Mr. Magee in his affidavit sworn on 28th November, 2019 in relation to the sale of the tractor, as appearing at paras. 50-65, that while there were extensive dealings in tractors during the relevant period, that was entirely done by the defendant. Accordingly, the court rejects the evidence of the notice party that the sale of a tractor produced this level of funds, which contributed to the purchase price of the property.
122. While there is evidence of very significant deposits of funds into the notice party's credit union account, the court is persuaded by the evidence set out by Mr. Magee in his affidavit evidence, that such sums were in all probability the proceeds of business activities carried on by the defendant through various corporate entities.
123. At the hearing of the application, the notice party applied for an adjournment in the course of her submission, on the basis that she had been accepted by the Legal Aid Board as being entitled to legal aid. However, she did not produce any documentation to that effect. The court does not think it necessary to grant an adjournment of the determination of the plaintiff's application herein for a number of reasons. Firstly, the notice party was represented in this application by a solicitor from sometime prior to the filing of her first affidavit on 7th August, 2019, until her solicitor was given liberty to come off record by order of the High Court on 29th June, 2021. Thus, she had the benefit of legal representation when she submitted her two substantial affidavits in response to the plaintiff's application herein.
124. Secondly, the order of the High Court dated 29th June, 2021, records that the court had been informed by the notice party's former solicitor, that the notice of motion and the grounding affidavit in support of his application to come off record on her behalf, had been served on the notice party by email. This means that she was aware that her solicitor wished to cease acting on her behalf from sometime prior to 29th June, 2021. She would have become aware that the order giving him liberty to come off record had been made on that date. Thus, the notice party had ample time between June 2021 and the hearing of this application in February 2022, to apply for legal aid if she wished to be legally represented at the hearing of the application before this Court. It is also noteworthy that the third affidavit sworn by Mr. Magee on 28th November, 2019, was served on the notice party some eighteen months prior to her solicitor coming off record. Thus, she had more than ample time while legally represented to put in a further affidavit, if she had wished to do so. Taking all of these matters into consideration, the court was satisfied that it was appropriate to proceed with the application notwithstanding that the notice party was not legally represented before the court at the hearing of the application.
125. A further submission made by the notice party at the hearing of the application, was to the effect that the plaintiff was estopped from denying that she was the beneficial owner of the property, due to representations that had been made by or on behalf of the plaintiff

in previous enforcement proceedings relating to the notice party's family home; wherein the plaintiff had apparently represented to the court that she would not be destitute if an order was made appointing a receiver over the family home, due to the fact that there was another property, being the property the subject matter of these proceedings, registered in her name.

126. The court is not satisfied that if such representation was made to the court on a previous occasion by or on behalf of the plaintiff, that that amounted to a representation that it was accepted by the plaintiff that the notice party was the beneficial owner of the property. The court is satisfied that if any such representation to that effect was made by the plaintiff, it was merely an assertion that the notice party would not be left destitute if an order was made in relation to her family home, as she was the registered owner of another property, which statement was entirely accurate. However, the making of such representation, does not stop the plaintiff from pursuing its application herein.
127. For the reasons set out herein, the court finds that the notice party did not provide the funds that were used to purchase the property from her own resources.
128. The court is satisfied that the true beneficial owner of the property is in fact the defendant. The court accepts the evidence given by Mr. Magee on behalf of the plaintiff in relation to the probable sources for the funds that were used to purchase the property. In this regard, the court accepts the averments made by Mr. Magee at paras. 17-20 of his affidavit sworn on 4th April, 2019, as further elaborated upon in his affidavit sworn on 11th September, 2019 at paras. 50-55. The court is satisfied that on the balance of probabilities, the defendant is the beneficial owner of the property.
129. Unfortunately, that does not conclude the matter. Order 45, r. 9 states that the court, in determining whether it is just or convenient that a receiver by way of equitable execution be appointed, "*shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if it shall so think fit, direct any inquiries on these or other matters, before making the appointment*".
130. In this case, the plaintiff is suing on foot of a judgment for just over €4.9 million obtained against the defendant in 2009. The plaintiff has taken steps to enforce that judgment against the defendant. Those proceedings involved, *inter alia*, the cross examination of the notice party before the High Court in relation to whether she was the beneficial owner of two properties. That issue was resolved in favour of the plaintiff.
131. At paragraph 4 of his first affidavit sworn on 4 April 2019, Mr. Magee stated that the plaintiff had carried out a long process of execution upon the said judgment, which resulted in the appointment by the President of the High Court of Mr. Myles Kirby as a receiver over certain assets that were beneficially owned by the defendant. Those assets included "*46 motor vehicles and a number of properties and various parcels of land.*"

132. All of the affidavits before the court on this application were sworn in 2019. The court does not know what sums have been obtained by the plaintiff in satisfaction of its judgment. The court does not know to what extent the judgment remains unsatisfied at present.
133. In the absence of knowing to what extent the judgment remains unsatisfied, and what amount may be obtained on a sale of the property, the court cannot proceed to appoint a receiver by way of equitable execution, because in coming to a determination as to whether it is just or convenient to appoint a receiver, it must have regard to these matters, on which it has no evidence at present.
134. Order 45, r. 9 provides that the court may, if it thinks fit, direct any inquiries on these matters, before making the appointment. Taking a realistic approach to the circumstances of the case, the court is of opinion that it is highly probable that there is a significant portion of the judgment still unsatisfied. If there were not, there would be no reason for the plaintiff to bring the present application. On this basis, the plaintiff has established a *prima facie* case that it is just and convenient that a receiver by way of equitable execution be appointed. However, it is necessary for the court to have further evidence on the matter.
135. To that end, the plaintiff will have three weeks from the date hereof, to furnish an affidavit setting out the up-to-date position in relation to the steps taken to satisfy the judgment and the amounts recovered on foot thereof, together with evidence on the other matters of which the court must be satisfied under O. 45, r. 9. That affidavit must be served on the notice party.
136. The notice party will have three weeks thereafter, to furnish any response that she wishes to make. Her affidavit must be served on the plaintiff and filed in the Central Office of the High Court for the attention of this court.
137. When these steps have been taken, the court will make its final determination and order in the matter.