

**THE HIGH COURT**

[2022] IEHC 277

[2020 No. 7 M]

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW  
REFORM ACT 1989**

**IN THE MATTER OF THE FAMILY LAW ACT 1995 AS AMENDED**

**BETWEEN:**

**Q**

**APPLICANT**

**– AND –**

**Q**

**RESPONDENT**

**JUDGMENT of Mr Justice Max Barrett delivered on 12<sup>th</sup> May, 2022.**

**I**

**Two Applications**

1. This judgment relates to two applications. The first is an application for discovery brought by the respondent. The second is an application for remittal of these proceedings to the Circuit Court, which application has been brought by the applicant.

## II

### Background Facts

2. The background facts have been succinctly stated in an affidavit sworn by the solicitor for the applicant and are respectfully adopted by me to the extent that they are quoted hereafter (subject to a degree of necessary anonymisation):

- “4. *As appears from the Special Summons herein...the parties herein were married on [stated date]...and have [stated number of]...children....On the applicant’s instructions, I wrote to the respondent by letter dated [stated date]...to initiate the process of legal separation. The applicant left the family home on [stated date]...and these proceedings were issued on 5<sup>th</sup> February 2020. I am instructed and believe that the family home was the only real property owned by the applicant or the respondent at that time except for an investment property in joint names at [stated address]....*
5. *I say that the applicant is [stated profession]...and at the time of the institution of these proceedings [was a shareholder/director of certain companies]....*
6. *The applicant’s mother died on [stated date] and in her will...she appointed [certain stated persons]...to be executors and trustees of her will...and appointed the rest and residue of her estate to her trustees on trust for the benefit of the beneficiaries [including the applicant]....*
7. *I say that, as appears from the said letter from the trustees...the trustees had decided to make an interim distribution of the trust and had appointed the following property to the applicant: [property identified]....*

8. *I say that the trustees' said letter also states that 'The trustees will pay the discretionary trust tax liability of [stated sum]...which has now been triggered. The Section 60 policy proceeds will be available to pay CAT liabilities which arise as a result of the distributions being made....The balance proceeds remaining in the Section 72 policy can then be used to pay part of the discretionary trust tax liability.*
9. *I say that I am instructed by the applicant and believe that he is hopeful that the trustees will appoint the property at [stated place]...to him since he has lived there since [stated date]. [The tax arrangements that would then apply are described]....*
10. *In relation to the discovery process in these proceedings...I say that I furnished documents to the respondent's solicitors vouching the applicant's affidavit of means sworn on [stated date]....Each party raised queries in relation to their respective finances and it was agreed and ordered by the High Court at case management on [stated date]...that the parties would exchange documents in reply to queries on [stated date]...by registered post. Further queries were to be raised within 14 days of the exchange and replies were to be furnished within a further period of 7 days. It was also agreed between the parties that [Stated Person]...would value the family home on behalf of both parties. I say that by letter dated [stated date]...I also furnished:
  1. *signed abridged accounts for the years 2017, 2018 and 2019 for the only company in which the applicant had a stated shareholding at that time....*
  2. *directors' loan agreements.*
  3. *the applicant's P60s for 2016, 2017, and 2018.*
  4. *employee details summary for 2019,*
  5. *the applicant's payslips from 1 June 2020 to 31 December 2020.**

11. *I say that by letter dated [stated date]...I provided a copy of the applicant's late mother's will and a copy of the trustees' solicitor's letter of [stated date]...I say that the applicant also agreed to make discovery of certain other documents including the financial statements for all companies of which he was a director or shareholder for 4 years ending 2019. Subsequently by letter dated [stated date]...I furnished financial statements for 2020 for the following companies: [stated company names]....*
12. *I say that I have corresponded with the respondent's solicitor in relation to the respondent's request for financial documents, information and discovery and I beg to refer to a booklet of the relevant correspondence (comprising the following letters): [list of correspondence follows]....”.*

3. The respondent has brought the within discovery application, being dissatisfied with the level of documentation supplied (or which it has been undertaken to supply) thus far by the applicant.

### **III**

#### **Documents Sought**

##### *Category B*

4. The respondent has sought a copy of all correspondence between the applicant and the trustees of the will trust in which the applicant refers to the possible and/or potential distribution of the assets in the trust, as well as summary information on the method used to distribute the trust to date.

5. I respectfully do not see that this documentation is relevant. The focus of the court will be on dividing such assets as are received. Distribution of the trust property is due to take place later this year. The respondent's solicitors have already been told that the applicant does not have information concerning the likely distribution, albeit that he harbours certain hopes in this

regard. Moreover, because of certain historical allegations that were made against the applicant, counsel for the applicant indicated that the trustees and members of his family will not, to paraphrase counsel, ‘touch his client with a 40 foot bargepole’, with the result that there is no meaningful prospect of his obtaining the information sought from the trustees.

6. The applicant mentioned that there might also be third-party data protection issues in the event that the court ordered discovery under this heading. I do not myself believe that this would continue as a concern if the discovery was ordered by the court (and the order could be crafted in any event to avoid any particular issue/s presenting in this regard). However, as – for the reasons stated – no order of discovery will be made under this heading, the data protection concerns do not arise to be addressed.

#### *Category C*

7. The respondent has sought an up-to-date valuation of the applicant’s companies, including certain stated companies, to reflect their current market value, as well as the estimated market values of the properties owned by those companies.

8. In a letter of 16<sup>th</sup> March 2022, the applicant’s solicitor stated the valuations as set out in a valuation report of 17<sup>th</sup> February 2022 and suggested (perfectly properly) that any valuation reports would be exchanged in the usual way just ahead of the hearings, those valuation reports being privileged. Counsel for the respondent queried whether, in the manner in which the affidavit of the solicitor for the applicant was worded, the court could be satisfied that the report was privileged. I must admit to not being a devotee of seizing on particular words in an affidavit and imbuing them with, what seems to me, with all respect, to be unnecessary significance: it is clear that the applicant has proceeded *vis-à-vis* the valuation report as countless other applicants/respondents have proceeded in other proceedings and thus that the usual niceties and normalcies present.

#### *Category G*

9. The respondent has sought (i) certain sale (and sale proceeds) documentation in relation to a particular property and also (ii) the legal title documentation (and related documentation)

showing the ownership and other information (including the square footage) of another property.

**10.** Discovery of the documentation referred to at (i) was not sought in advance of this motion and so does not fall properly to be ordered at this time. In any event the reasons proffered for seeking this documentation (perhaps unsurprisingly given that the detail has never been threshed out between the solicitors) is generic and does not address why discovery of this documentation is relevant, necessary and proportionate.

**11.** As regards the documentation at (ii), at an early stage in these proceedings, the respondent appears to have been told that the companies in this case own Properties 1, 2 and 3. In fact because one property has, over the last few decades been subsumed into another, Properties 1, 2 and 3 have become Properties i, ii, and iii (different numbers; same properties). This honest and genuine mistake was explained by one solicitor to another; that, with all respect, should be the end of matters.

*Category I*

**12.** The respondent has sought the applicant's statement of liability for 2019 and 2021. The applicant has already agreed to make these documents available when they become available and one statement has already been provided.

**13.** The respondent has sought a copy of the applicant's 2020 tax assessment as raised by the Revenue Commissioners. The applicant has already indicated that he will provide this.

**14.** The respondent has sought details on all gross income from all sources in respect of the period 1.i.2021-1.iii.2022. Discovery of the revenue statement of liability for 2020 was furnished to the respondent on 16<sup>th</sup> March 2022. The applicant also furnished his P60 employee details. The 2021 statement was not sought prior to the issuance of the motion; I assume that if such a documentation is to issue the applicant will be satisfied to undertake to provide same.

**15.** The respondent has sought the applicant's employment details for 2020 and 2021 and these have been provided.

*Category K*

**16.** The respondent has sought detailed information and/or vouching, inclusive of market valuation of all the assets, shares and/or properties which remain in the will trust, to include (i) supporting documentation as to a discretionary trust tax refund if the trust is wound-up before year-end, and (ii) documents detailing the percentage share of the trust to which the balance of assets are to be assignable to the applicant and the applicant's children.

**17.** I must admit to some sympathy for the applicant and his solicitors who, when it comes to this aspect of matters, must feel like they are speaking into a vacuum. They have repeatedly indicated what property the applicant hopes to receive. They have repeatedly indicated that because of certain historical allegations that were made against the applicant, the trustees and members of his family will not 'touch [their] client with a 40 foot bargepole', with the result that there is no meaningful prospect of the applicant obtaining further, more precise information from the trustees. They have provided the valuation of the property that he expects to receive, with the full valuation report to be exchanged in the usual course ahead of the hearing. And they, like the court, have no idea what exactly is being sought when the respondent comes seeking 'the percentage share of the trust to which the balance of the assets, properties and/or share remaining in the Trust as to be assignable to the Applicant and the Applicant's children' – save to note (again) that because of certain historical allegations that were made against the applicant there is no meaningful prospect of the applicant obtaining further, more precise information from the trustees.

*Category L*

**18.** The respondent has sought a copy of (i) a particular CAT calculation, (ii) certain copy valuation documentation, (iii) certain copy tax returns, (iv) documentation concerning how the discretionary trust tax liability was calculated, and (v) documentation identifying the detail of the Section 60/72 policies (counsel for the respondent appeared to accept at the hearing that despite the mention of two policies there is but one such policy).

**19.** It has already been agreed to provide (i) when available. As to item (iii) the applicant typically pays his taxes via the PAYE system and there is, I understand, no other return to furnish bar what it was already undertaken to supply. None of the other documentation is available to the applicant and as regards procuring information from the trustees the applicant hits the difficulty arising in this regard that has already been touched upon above (in the light of the historical allegations made against him). As mentioned, the reference to the two policies appears to be a reference to but one policy and the solicitor for the respondent has stated her understanding that the proceeds of life assurance policies which meet the requirements of ss.60/72 are exempt from the inheritance tax that would otherwise be chargeable on them.

#### **IV**

##### **Conclusion re. Discovery**

**20.** No discovery order falls to be made. I assume the undertaking mentioned in the context of Category I above will be provided if it is needed.

#### **V**

##### **Remittal Application**

**21.** The applicant has sought a remittal of these proceedings to the Circuit Court for hearing. In essence, he desires this remittal because the scale of the assets ‘at play’ are and will be within the jurisdiction of the Circuit Court and he wishes to keep the costs of the proceedings down (they would, I am told, be higher if heard in the High Court for reasons that are not entirely clear).

**22.** The applicant apparently commenced High Court proceedings because he was advised that he was more likely to receive an early date for the hearing of a custody and access dispute than he would get into the District Court or Circuit Court in the area in which he lives. Custody and access proceedings are very challenging proceedings for everyone involved (judges included) and I see no reason why the applicant’s desire to have such proceedings addressed as quickly as possible should be counted against him.



**23.** It is accepted by both sides that the court has the power to continue these proceedings before it or to remit them to the Circuit Court as sought by the applicant.

**24.** Counsel for the respondent contends that these proceedings should stay before the High Court. She contends that (i) that there are complex financial issues at play, (ii) the applicant has delayed in providing details about the will trust and his personal finances, (iii) her client has very limited resources available to her – and thus needs to get things sorted. (Item (iii) may seem counter-intuitive but I understand what counsel means: the money needs to start flowing for her client as quickly as possible so, oddly enough, her client is better placed if this matter comes on as quickly as possible, even if that is before the High Court and notwithstanding that there is a cost to this).

**25.** As to (i), I do not myself see that there are complex financial issues at play and thus I do not see that these proceedings will occupy much court time when they come on for hearing. As to (ii), I respectfully do not see that there has been any delay on the applicant's part in this regard. As to (iii), I am always sensitive to people who have genuine income problems and I can see why the respondent would be eager to have these proceedings dealt with swiftly so as 'to get the money flowing'. I also accept the reasoning of the respondent's counsel that if the money is to start flowing as quickly as possible, her client is better placed if this matter comes on as quickly as possible and the surest place for the proceedings to come on quickest is before the High Court.

## **VI**

### **Conclusion re. Remittal**

**26.** Having regard to the facts as stated in Part V, I respectfully decline to remit these proceedings to the Circuit Court. They could be remitted but they can be brought on more quickly in the High Court which seems most sensible having regard to the position in which the respondent finds herself placed.

**TO THE PARTIES:  
WHAT DOES THIS JUDGMENT MEAN FOR YOU?**

*Dear Ms Q/Mr Q*

*I have written a long judgment about your applications. The judgment contains legal language which can be challenging (and boring) to read.*

*I am aware that family law judgments touch on important matters in people's lives. So I now add a note to my judgments explaining in plain English what I have decided. That seems to me to be the least that you all deserve.*

*This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is merely meant to help you understand what I have decided. Your lawyers will explain my judgment in more detail.*

*I have referred to you in my judgment as Ms Q and Mr Q, with the intention that no-one else who reads this judgment should recognise who you are. I am sorry if that feels impersonal but I think it is for the best.*

*Ms Q brought a 'discovery' application, looking to be supplied with all manner of documents. Her application has been unsuccessful (bar one minor point on which an undertaking from Mr Q or his solicitor may be needed).*

*Mr Q brought an application seeking that this matter should be sent to the Circuit Court for that court to deal with. His application has been unsuccessful.*

*Yours sincerely*

*Max Barrett (Judge)*