

THE HIGH COURT

[2023] IEHC 740

[2018 7829 P]

BETWEEN

MARIE GIBSON

PLAINTIFF

AND

KEVIN O’GORMAN PRACTISING UNDER TITLE AND STYLE OF KEVIN
O’GORMAN AND COMPANY SOLICITORS,

PAULINE GIBSON

AND PAUL McCLEARY

DEFENDANTS

JUDGMENT of Mr. Justice Cregan delivered on the 14th day of December, 2022

Introduction

1. This is a lamentable tale. Mrs. Gibson is an elderly widow in her eighties. Her husband died on 8th January, 2017. Shortly after his death, she discovered that one of her daughters, Ms. Pauline Gibson, had defrauded her and her husband out of their family home and had purportedly arranged for the transfer of the family home to herself in or about September, 2003. Although the house was valued at €250,000 at that time, Mrs. Gibson and her husband did not receive a cent from the purported transfer of their home. Their daughter had borrowed a sum of €190,000 from First Active secured by way of a mortgage on the home. As if this fraud were not enough, the first defendant, Kevin O’Gorman, acted as solicitor for both parties to the transaction (i.e. both for the plaintiff and her husband as purported vendors and for Ms. Pauline Gibson as purported purchaser). Mr. O’Gorman conducted the transaction in a grossly

negligent fashion and failed to advise Mrs. Gibson and her husband either properly or at all in relation to the transaction. As a result they were never made aware that they were purportedly transferring their home in its entirety to their daughter for no consideration. Moreover, because this purported transfer in 2003 was never stamped or registered by Mr O’Gorman, he sought to re-execute the transfer in 2009/2010. However Ms. Pauline Gibson forged her parents’ signatures (or procured someone to forge their signatures) on these documents. As a result of these forgeries, the property was registered in Ms. Pauline Gibson’s name. This fraud by Ms. Pauline Gibson only came to light when Mr. Gibson died in 2017 – some fourteen years after the event. Shortly afterwards Mrs. Gibson also learned that her daughter had defaulted on her loan to the bank, the bank had appointed a receiver and the receiver had sent her a letter demanding that she confirm her occupancy of the property, that she provide a copy of her occupancy agreement within seven days and that all rental income was to be paid to the receiver. The plaintiff then went to her current solicitor, Gaffney Halligan & Co. It is just as well that she did. Her legal team have pursued this case with great tenacity, thoroughness and professionalism since that time.

The pleadings

2. The plaintiff has issued proceedings against three defendants as follows:
 - (1) The first defendant is sued for professional negligence and breach of warranty of authority; importantly, he is not sued for fraud;
 - (2) The second defendant, Ms. Pauline Gibson, the plaintiff’s daughter, is sued for fraud, deceit, conversion, unjust enrichment and related matters; the second defendant did not defend these proceedings and the plaintiff obtained judgment in default of defence against her;
 - (3) The third defendant is the receiver appointed by the lending institution. The loan of €190,000 was initially made by First Active in September 2003 to the second

named defendant; on 15th February, 2010 the loan was transferred to Ulster Bank Ltd pursuant to a ministerial order dated 7th December, 2009; subsequently Ulster Bank assigned the loan to Promontoria (Oyster) DAC on 19th December, 2016. Ms. Pauline Gibson defaulted on the loan and on or about 12th September, 2017, Promontoria appointed the third named defendant as receiver over the property. The plaintiff seeks orders rescinding the transfer of the property to the second defendant, and an order preventing the third defendant from taking possession of the property. However, the third defendant, has maintained a neutral role in these proceedings as between the plaintiff and the first and second defendant.

3. It was agreed between the parties, and submitted to the court, that the court should first decide on the issues of liability between the plaintiff and the first and second defendants and that all subsequent issues including quantification of damages, the question of the validity of the mortgage or charge, any injunctions which might be sought by the plaintiff against the receiver and/or any rectification of title should be held over until this judgment was delivered.

Background

4. Mrs. Gibson married Mr. Gibson in August 1959. They moved into their family home in 21 Castletymon Green, Coolock, Dublin 5 (“the property”) in 1963. They initially rented this house from Dublin City Council (“DCC”). In 1977 Mr. and Mrs. Gibson agreed to buy their home for the sum of IR£2,500 from DCC through the Housing Purchase Scheme. This amount was to be paid in weekly instalments. Mrs. Gibson gave evidence that every Monday she went to the bank to make these payments. This amounted to a sum of ten euros per week in the later years of the loan. The final payment on the house was made on 24th March, 2009. It is clear therefore that Mr. and Mrs. Gibson continued to make payments on the housing loan even after the purported transfer of the house to their daughter.

5. This property was registered in Folio 67335L which recorded that Mr. and Mrs. Gibson were the registered owners of a 150 year leasehold interest subject to a charge for the benefit of DCC. Importantly, the Folio recorded that there was a covenant “against alienation, mortgaging and charging” the said property without the consent of DCC. This is important because, as will be seen later in the judgment, Mr. O’Gorman gave an undertaking to First Active that he would ensure that the plaintiff and her husband had good marketable title to transfer the property to their daughter. However Mr. O’Gorman made no such enquiries. As it happened, Mr. and Mrs. Gibson did not have good marketable title because they had to obtain the consent of DCC to this transfer. As was explained in evidence, the purpose of this covenant was so that DCC could ensure that if the owners of the property were going to sell the property to another person, they would not subsequently have to seek housing from the Council a second time.

6. Mr. and Mrs. Gibson resided at this family home for the entirety of their lives from 1959 onwards. They had six children but unfortunately one of their daughters died at a young age. Thus they have five surviving children including Ms. Pauline Gibson the second defendant in these proceedings.

7. Mr. Gibson worked as a truck driver for over thirty years and later became a self-employed taxi driver. Mrs. Gibson did not work outside the family home.

8. It is clear from Mrs. Gibson’s evidence that her family home was her sole asset, that she and her husband worked hard all their lives to pay for their home and to raise their family. They never had any borrowings of any sort from any bank or financial institution at any time – apart from this agreement to buy their house from Dublin City Council.

9. Mrs. Gibson also gave evidence that it was their intention to leave the family home to their children in equal parts and that she and her husband had made wills which directed that, on their deaths, the family home was to be sold and the proceeds were to be divided equally

between all five children. Mrs. Gibson also gave evidence that since she discovered what Pauline had done she has since made a new will disinheriting her.

10. In or about 2013, Mr. Gibson became unwell and suffered a leg amputation. As a result Mr. and Mrs. Gibson applied for, and received, a grant of €33,000 from Dublin City Council to pay for modifications to the house in the light of his disability. Apart from this, Mrs. Gibson's evidence was that – prior to this event – her husband was very good with his hands and that he did all the renovations and/or redecorations to the house as required. This is important because, as will be seen later in this judgment, the evidence of Mr. O'Gorman (and of Mr. Leahy) was to the effect that the plaintiff and her husband needed some of the money raised by Ms Pauline Gibson from First Active to carry out some renovations to the house and also to buy a taxi for Mr. Gibson.

11. Mr. Gibson died on 8th January, 2017 and as a result the plaintiff became the full owner of the house from that time. Under his will, his son Damien and his daughter Marie, were named as executors. Damien gave evidence that, after his father died, he tried to arrange that the various utility bills were transferred from their father's name into their mother's name. As part of this exercise, he contacted the Revenue Commissioners to ensure that the local property tax to be paid on his parent's family home was transferred from his father's name to his mother's name.

12. His evidence was that when he contacted the Revenue Commissioners in or about April-May 2017 to put the property tax in his mother's name, he was informed by the Revenue Commissioners that the property was not registered in his parent's name but was in fact registered in his sister's name (i.e. in the name of Ms. Pauline Gibson). This clearly came as a shock to Damien, – and understandably – as a terrible shock to the plaintiff.

13. Attempts were made by Damien and other members of the family to contact Ms. Pauline Gibson without any success. Ms. Gibson has never returned any calls or made any attempt to

contact her mother or any other member of her family. Mrs. Gibson gave evidence that, from the date of the funeral of her husband, she has never spoken to, or met, her daughter Pauline. Indeed, the family has no telephone number or address for Ms. Pauline Gibson; they do not know where she lives or what are her financial or marital circumstances. Mrs. Gibson said in her evidence that the reason Ms. Pauline Gibson has not contacted any member of the family or returned any of their calls since the date of her father's funeral is that she knew well that she engaged in a fraud on her parents and that the fraud would now come out.

Events which occurred in 2003

Evidence of Mrs. Gibson

14. Mrs. Gibson gave evidence that, in or about 2003, her daughter Pauline approached her and her husband requesting a loan in order to carry out renovations on Pauline's family home at Fortfield Road in Terenure where she lived with her husband, Mr. Frank Murphy, and her two children. Mrs. Gibson said that she and her husband would do whatever they could to help any of their children and, when their daughter made this request, they decided to try to help her in any way they could. The plaintiff said she trusted her daughter completely in all matters.

15. Mrs. Gibson also said that her daughter had mentioned something to her about borrowing from the bank against the house – or words to that effect. It is clear from her evidence that Mrs. Gibson had only a vague and limited understanding of what was meant by borrowing from the bank “against the house”. The plaintiff also stated clearly in evidence that she and her husband never agreed to sell her house to her daughter – still less to transfer the house to her daughter for nothing. The plaintiff also said in evidence that she was never aware of the amount of money her daughter was proposing to borrow. The plaintiff accepted that, whilst she and her husband were naive in not asking about the amount of money required, they trusted their daughter completely. Indeed, this one fact illustrates how vulnerable the plaintiff

and her husband were, and that they clearly needed proper legal advice in respect of this transaction.

16. It appears that Ms. Pauline Gibson had approached First Active Plc with a view to obtaining a loan of €190,000 secured against her parents' property. This loan and mortgage were arranged by Mr. Martin Leahy. First Active agreed to provide this loan to her based on the usual solicitor's undertaking. As Mr. O'Gorman was acting on behalf of Ms. Pauline Gibson, he provided this undertaking.

17. Mrs. Gibson gave evidence that she met her daughter, Pauline, in Devitt's pub on Camden Street sometime in 2003. They met there because this was her daughter's local pub. On this occasion Ms. Pauline Gibson asked her parents would they sign the forms "today" and they said they would. Mrs. Gibson gave evidence that shortly afterwards "a man walked in – we didn't know he was. He sat down, we signed the forms" and "as far as we were concerned he was from the bank".

18. In fact, what happened next was that, unbeknownst to the plaintiff or her husband, there was – apparently – a purported full transfer of the property by the plaintiff and her husband to their daughter (Ms. Pauline Gibson) in or about September 2003. Whether in fact such transfer ever occurred at this time will be considered later in this judgment.

19. The plaintiff said that neither she nor her husband ever received any legal advice – good, bad or indifferent – from any solicitor, including the first named defendant. Mrs. Gibson said in evidence that the entire transaction whereby they purportedly transferred their house to their daughter was done without their knowledge and/or consent and without any legal advice whatsoever. The plaintiff said they never received any written advice or any written communication from Mr. O'Gorman in connection with this transaction. Mr. O'Gorman accepts that he never gave Mr. and Mrs. Gibson any written advice in relation to the transaction

but gave evidence that he gave verbal advice about the transaction. The plaintiff alleged that the entire purported transfer to their daughter was a fraudulent transfer.

20. It was put to Mrs. Gibson in cross examination that Mr. O’Gorman would say that Mr. and Mrs. Gibson wanted part of the proceeds of the bank loan to do up and redecorate their house. Mrs. Gibson rejected this suggestion in unequivocal terms saying in evidence that her husband was very good with his hands and that he had always done whatever was required to maintain and redecorate the house. I accept Mrs. Gibson’s evidence in this regard. I do not accept Mr. O’Gorman’s evidence on this matter.

21. It was also put to Mrs. Gibson in cross examination that Mr. O’Gorman would say that part of the proceeds of the loan were to be used to enable Mr. Gibson to buy a new car so that he could start his taxi business. Again, Mrs. Gibson rejected this matter in unequivocal terms saying that she had sold her car, a Nissan Micra, and had given the proceeds of sale from this car to her husband to enable him to purchase a taxi. Again I accept the evidence of the plaintiff on this matter and I do not accept Mr. O’Gorman’s evidence.

22. It was also put to Mrs. Gibson in cross examination that Mr. O’Gorman would say that, as far as he was aware, the loan being obtained by Ms. Pauline Gibson was in effect a “collective family enterprise” in which they would share in the proceeds of the loan. Again Mrs. Gibson rejected this entirely. As it is an agreed fact that the plaintiff and her husband did not receive a euro from the purported transaction, again, I accept the evidence of Mrs. Gibson.

23. It was also put to Mrs. Gibson in cross examination that the person who came into Devitt’s pub on this occasion in 2003 was Mr. O’Gorman, her solicitor. Mrs. Gibson said that a man whom they didn’t know and whom they had never met but who, as far as they were concerned, was from the bank walked into the pub, sat down and got them to sign some forms. Mrs. Gibson said she did not know who this man was. Counsel for Mr. O’Gorman asked Mrs. Gibson to identify Mr. O’Gorman in court. Mrs. Gibson has failing eyesight and she took up

an illuminated magnifying glass when looking at Mr. O’Gorman in court. She said that she couldn’t say if she had met him before or not. She accepted in her evidence that the first defendant might have been the man she met in the pub in Camden Street but that she didn’t know who that man was.

24. Mrs. Gibson also said that from the day they signed the forms – whatever those forms were – they never received any letters or telephone calls from the first defendant in relation to this matter or any other matter. She also said that she was never in Mr. O’Gorman’s office in Lucan.

25. Mrs. Gibson also said that her daughter, Pauline, never said to her “I’m buying your house” because if that had been said to her, she and her husband would have categorically told her “no, you’re not”. The entire substance and tenor of Mrs. Gibson’s evidence was to the effect that if someone had explained the facts of what was happening to her and her husband – that they were about to enter into a transaction in which they purportedly transferred their house to their daughter for no money – they would never have agreed to this transaction. She said they would never have sought to prefer their daughter over all of their other children in this way. Mrs. Gibson said no one ever sat down and explained to her and her husband the full nature of this purported transaction and the risks they were running.

26. It was also put to Mrs. Gibson in cross examination that Mr. O’Gorman would say that he met the plaintiff and her husband in their daughter’s house in Fortfield Drive in Terenure as well as in the car park in Devitt’s pub in Camden Street. Mrs. Gibson said that she never met Mr. O’Gorman in her daughter’s house. I accept Mrs. Gibson’s evidence on this point.

The evidence of Mr. O’Gorman

27. Mr. O’Gorman also gave evidence. Mr. O’Gorman is a solicitor in private practice since 1994. He has been a sole practitioner for the last 25 years. Mr. O’Gorman gave evidence that he met Ms. Pauline Gibson in or about 1998 in Lucan. He got to know her after she married

Mr. Frank Brady who was a client of his at that time. He said that, in or about 2003, Ms. Pauline Gibson spoke to him as she wanted to buy out her parents' house, and she wanted to obtain a loan from the bank to do this. He said that he was told by Ms. Pauline Gibson that purpose of the loan was

- (1) to carry out renovations to Ms. Pauline Gibson's home;
- (2) to carry out renovations to her parent's home;
- (3) to buy a taxi for Mr. Gibson; and
- (4) to pay off some loans which Mr. and Mrs. Gibson had at that time.

28. Mr. O'Gorman said that he met Ms. Pauline Gibson and Mr. Frank Brady in 2003 with the plaintiff and her husband in Fortfield Road. He said the purpose of this meeting was (i) to sign loan documents to allow the transfer of the property from the plaintiff and her husband to Ms. Gibson and (ii) to explain the nature of the transaction to the plaintiff and her husband. He said that, on that day, in September 2003, at Ms. Pauline Gibson's home in Fortfield, the deed of transfer, the family home declaration and the declaration of solvency were signed by the plaintiff and her husband. He said that he, Mr. O'Gorman, was there on his own and that the second defendant was also there. He said that this occurred in the evening because his office was in Lucan and he lived in Terenure so he arranged to meet the parties in the evening on his way home from work.

29. Mr. O'Gorman gave evidence that he advised the plaintiff and her husband to consider carefully what they were doing but he accepted he did not advise them to get independent legal advice. Mr. O'Gorman also stated that he believed the plaintiff and her husband got independent financial advice from Mr. Martin Leahy whom he knew to be a financial advisor engaged in the organisation of loans and mortgages.

30. Mr. O'Gorman said that he would have "spelled out the repercussions of Pauline not paying the mortgage". He said that they seemed set on what they wanted; they said they were

happy to proceed so he said in evidence, “on that basis I got them to sign the documents”. He said the conversation lasted approximately fifteen to twenty minutes.

31. Mr. O’Gorman said that he met Mr. and Mrs. Gibson on two occasions, and that he had advised her and her husband about the nature of the transaction on both occasions. He said in evidence that he met Mr. and Mrs. Gibson in the car park in Devitt’s pub in Camden Street (and not inside the pub) and also at Pauline’s home.

32. For reasons set out later in this judgment I do not accept the evidence of Mr. O’Gorman on these matters. In my view Mr. O’Gorman is not a credible or reliable witness.

33. Mr. O’Gorman said that he then left Fortfield Drive with three signed documents, that he would have brought these to his office and that subsequently the cheque issued from First Active in the sum of €190,000 made payable to Ms. Pauline Gibson. He said there was some urgency on the part of Ms. Pauline Gibson to get the money and that Pauline was keen to get the money.

34. Mr. O’Gorman gave evidence that when he received the cheque from the bank he paid a sum of €135,000 to Ms. Pauline Gibson, that he used a sum of €25,000 to repay some loans which Ms. Pauline Gibson had with AIB and that he retained a sum of €30,000 to cover stamp duty and other matters. However he said that this sum of €30,000 was subsequently paid over in full to Ms. Pauline Gibson, in or about 2009. He accepted that neither the plaintiff nor her husband received a single euro from the transaction.

35. Mr. O’Gorman said he received a sum of €4,000 including VAT in 2009 from the second defendant in respect of his fees in this matter. He said he was never paid anything by the plaintiff and her husband.

The loss of the file

36. To add to the difficulties of this case Mr O’Gorman has lost the entire file in relation to this transaction. The plaintiff’s new solicitors brought a motion before the High Court seeking an order that Mr O’Gorman deliver the plaintiff’s file to them.

37. Mr O’Gorman initially declined to furnish the file to the plaintiff’s new solicitors because he said he had been instructed by the second defendant, Ms Gibson, to deal with the transaction and that he could not give a copy of the file to the plaintiff’s new solicitors without her consent. Mr O’Gorman subsequently resiled from this explanation.

38. Mr O’Gorman, in an affidavit filed in an earlier application, also said that the file had been closed at the time he received the plaintiff’s solicitor’s request and it would have been located in a storage area at his home address in Gorey, County Wexford. However he said that although the storage area was searched the file was not found. He also said he searched his offices in Lucan and failed to find the file.

39. Mr O’Gorman initially speculated that he might have lost the file during an office move in 2012 but he subsequently confirmed that he was working on the file during the period June 2013 to April 2015.

40. Mr O’Gorman said in an affidavit filed in an earlier application that “the loss of the plaintiff’s file has not arisen through any deliberate attempt on my part to prevent the plaintiff from accessing information to which she has a legal entitlement. I say that the contents of the file vindicate my position in the transaction at issue in the within proceedings and that its loss prejudices my position in this regard”.

41. No evidence was given before the court that the file was deliberately mislaid or destroyed. In the light of the evidence, I am of the view that, on the balance of probabilities, the file was mislaid as a result of the lack of care and attention given to it by the first defendant. Whilst of course files can get lost or go missing in even the most well-organised professional

practices, nevertheless on the facts of this case I am of the view that it is part of a pattern of negligence by Mr O’Gorman in the care and attention which he gave to the interests of the plaintiff and her husband in this matter.

Conflict of evidence

42. There is therefore a significant conflict of evidence between Mrs. Gibson and Mr. O’Gorman in relation to the matters which took place in 2003. As Mr. Gibson is dead, as Ms. Pauline Gibson has not defended these proceedings, and as the file is missing, there is no other evidence available on this matter from the other participants in these events.

43. Having heard the evidence in this matter and having witnessed the demeanour of Mrs. Gibson and Mr O’Gorman in the witness box, I am of the view that Mrs. Gibson is a frank, forthright and honest witness. I accept her evidence on all these relevant matters.

44. By contrast I do not accept the evidence of Mr. O’Gorman. In my view his evidence was not credible.

45. In particular the following matters were relevant to my assessment of the credibility of Mr. O’Gorman’s evidence:

- (1) as will be set out later in this judgment, Mr. O’Gorman did certain acts and amended certain documents in such a way as to cast serious doubt on his credibility as a witness in respect of any of his evidence;
- (2) Mr. O’Gorman, through his counsel, sought to cross examine Mrs. Gibson on the basis that any meeting between Mrs. Gibson and her husband and Mr. O’Gorman had taken place outside Devitt’s pub – in the carpark. Mrs. Gibson however rejected that and said that any meeting took place inside Devitt’s pub. Subsequently Mr. O’Gorman accepted that this was the case. Therefore Mr. O’Gorman’s evidence on these matters is not consistent;

- (3) Mr. O’Gorman’s initial evidence was that he met the plaintiff and her husband in Devitt’s pub in or about 15th March, 2010 or a few days thereafter and that they re-executed the deed of transfer at that time in his presence. However, for reasons set out elsewhere in this judgment, it is clear that this did not happen and that in fact Mr. O’Gorman asked Ms. Pauline Gibson to take the deed of transfer away and get her parents to re-execute it shortly after 15th March, 2010;
- (4) the signatures of the plaintiff and her husband were never put on this document in 2010 in his presence even though he signed his name to say they were;
- (5) Mr. O’Gorman said that he advised the plaintiff and her husband in Fortfield Drive about the nature of the transaction and that having done so he got them to sign the deed of transfer in September 2003, the declaration of solvency and the family home declaration. However it is notable that none of these three documents have ever been produced in evidence before the court to corroborate his evidence;
- (6) Mr. O’Gorman said that this was because the file relating to this transaction had been lost. However Mr. O’Gorman gave a number of inconsistent explanations about the loss of this file at various times. Thus initially Mr. O’Gorman refused to give a copy of the file to the plaintiff’s solicitors when it was requested because he said he would have to obtain the consent of the second defendant to do so. When this excuse was not accepted, he then changed his story and indicated that he had lost the file and stated that he might have lost the file in an office move in 2012. He subsequently accepted that he could not have lost the file in an office move in 2012 because he did further work on the file in 2012, 2013 and 2014.

Findings of facts

46. It is an unusual feature of this case that the plaintiff was not even clear whether the first defendant was her solicitor.

47. However Mr. O’Gorman pleaded in his defence that he acted for both the plaintiff and her husband and the second defendant in this transaction.

48. Moreover Mr. Thomas, the expert retained by the plaintiff, said at paragraph 3 of his expert report that “In or about late 2003 Kevin O’Gorman solicitors of Kevin O’Gorman & Co. solicitors (“the solicitors”) acted for the plaintiff and her late husband John in connection with the sale and transfer of property situate at and known as 21 Castletymon Green, Dublin 5 (“the property”). The solicitor also acted in the sale for the second defendant”. Indeed Mr. Thomas’ report proceeds in the assumption that the first defendant acted for the plaintiff.

49. Likewise, the first defendant’s expert’s (Mr. Barry Lysaght) report proceeds on the basis that Mr. O’Gorman did act as the plaintiff’s solicitor.

50. In the circumstances therefore, and based on the evidence, I find as a fact that Mr. O’Gorman was acting as a solicitor on behalf of the plaintiff and her husband in or about September 2003 – and thereafter – (as well as acting on behalf of the second defendant) in relation to a purported transaction which involved the transfer of the plaintiff’s family home to Ms Gibson.

51. The purported transaction in or about 2003 was a transaction in which:

1. it was the intention of Ms. Pauline Gibson that the plaintiff and her husband would transfer their family home to Ms. Pauline Gibson for no consideration without disclosing the true nature of the transaction to her parents;
2. Ms. Gibson raised a mortgage/charge on the said property from First Active in the sum of €190,000 without disclosing this to her parents;
3. the cheque from First Active was received by Mr. O’Gorman upon him giving the usual solicitors’ undertaking to First Active – that he would ensure that the vendors had a good marketable title and that he would stamp and register the transfer and the mortgage within the usual time period;

4. First Active advanced a cheque in the sum of €190,000 to Mr. O’Gorman in or about September 2003 for the benefit of Ms. Pauline Gibson;
5. Mr. O’Gorman then paid out the entire sum of €190,000 to Ms. Pauline Gibson (or to repay loans on her behalf) in 2003 and 2009.
6. Mr. O’Gorman did not pay a single euro of this money to the plaintiff or her husband at that time or at any time.

52. It is also notable that Mr. O’Gorman’s evidence – that he thought that some of the money was to be used to repay loans which were owed by Mr. and Mrs. Gibson – was denied entirely by Mrs. Gibson. Mrs. Gibson said that neither she nor her husband ever had any loans from any bank or financial institution in their lives – apart from the financial arrangement which they entered into with DCC to buy out their home. I accept this evidence of Mrs. O’Gorman. It was also notable that in fact it was Ms. Pauline Gibson who had loans with AIB and that Mr. O’Gorman wrote a cheque to AIB to discharge these loans directly from the loan cheque from First Active in the sum of €190,000.

53. In each and every particular therefore I accept the evidence of Mrs. Gibson – that neither she nor her husband ever intended to benefit from this transaction nor did they ever benefit from this transaction. I reject the evidence of Mr. O’Gorman on these matters. It would appear that Mr. O’Gorman received his instructions on this matter from Ms. Pauline Gibson and not from the plaintiff and her husband.

54. Mrs. Gibson in her evidence said that she never received any, or any proper, legal advice from Mr. O’Gorman in relation to the transaction. She also said that she never received any written advice or correspondence from Mr. O’Gorman about the transaction. Mr. O’Gorman accepts that he did not give any written legal advice to the plaintiff in or about 2003 in respect of the 2003 transaction. I find as a fact therefore that Mr. O’Gorman never gave any written advice about the nature of the transaction to the plaintiff or her husband in or about 2003.

55. Mr. O’Gorman however said in his evidence that he gave oral advice at this time to the plaintiff and her husband about the nature of the transaction. Mrs. Gibson said she never received any such advice.

56. On the balance of probabilities, I accept Mrs. Gibson’s evidence and I do not accept Mr. O’Gorman’s evidence. I am of the view that Mrs. Gibson and her husband never received any or any proper advice in relation to this purported transaction in 2003.

57. It beggars belief that Mr. and Mrs. Gibson would agree to a transfer of their family home, the home in which they were living all their lives and which they intended to live for the rest of their lives, (and their only asset), to one of their daughters and not receive a penny in return, if they were properly legally advised. Mrs. Gibson also stated quite clearly in evidence that if she had been properly advised she would not have engaged in such a transaction.

58. I find as a fact therefore that Mr. O’Gorman did not give any or any adequate or proper legal advice to Mr. and Mrs. Gibson about the nature of the transaction in 2003.

59. It is also notable that there was no evidence before the court that the plaintiff and her husband ever in fact signed the deed of transfer in or about September 2003 – apart from the oral evidence of Mr. O’Gorman in the witness box. No copy of the actual deed of transfer purportedly signed in 2003 by the plaintiff and her husband was ever produced in court and, as will be seen later in this judgment, each of the two pages of the purported deed of transfer were tampered with by Mr. O’Gorman and apparently destroyed by him in 2009 and 2010.

The evidence of the plaintiff’s expert

60. The plaintiff obtained an expert’s report in relation to the issue of professional negligence from Mr. Joe Thomas solicitor. Mr. Thomas furnished an expert report dated 16th April, 2021 and gave evidence in court.

61. Mr. Thomas has a BCL, LLM and a Diploma in Commercial Conveyancing. He qualified as a solicitor in 1980. He lectures on conveyancing in the Law School of the Law

Society and at CPD events. He has acted, and continues to act, as an examiner on conveyancing in the Law School of the Law Society. He is a former chairman, and is currently a member, of the Conveyancing Committee of the Law Society. His practice as a solicitor is in the area of conveyancing (both residential and commercial) and he regularly acts as an expert witness in disputes as to what constitutes good conveyancing practices. The defendant accepts that Mr. Thomas is an expert in this area.

62. In his expert report and in his evidence before the court, Mr. Thomas gave as his opinion that the first defendant's conduct of this matter and his purported advice to the plaintiff and her husband clearly fell below the standard of care required of a reasonable solicitor acting in his position. In Mr. Thomas's opinion Mr. O'Gorman was clearly negligent in the conduct of this case.

63. Mr. Thomas indicated that, in particular, Mr O'Gorman was negligent in that:

- (1) He failed to explain properly the nature of the transaction to the plaintiff;
- (2) He failed to explain properly the consequences of the transaction to the plaintiff;
- (3) He failed to advise the plaintiff that the proposed transaction was an improvident transaction and was of no benefit to the plaintiff;
- (4) He allowed the transaction to complete when he knew that it was not in the best interests of the plaintiff;
- (5) He allowed the transaction to complete without discussing the transaction properly with the plaintiff;
- (6) He acted for both sides of the transaction when there was a conflict of interest;
- (7) He failed to advise the plaintiff to take legal advice from another solicitor in respect of the transaction;
- (8) He failed to provide written advice to the plaintiff in respect of the transaction;

(9) In or about 2009/2010, as will be seen later, he represented that he witnessed the plaintiff's signature when he had not done so;

64. Mr. Thomas, also gave evidence that the registration of a deed of transfer and mortgage usually takes place "almost immediately after the sale closes" and that a delay of six years – from 2003 to 2009 was "extraordinary". In fact the transfer was not registered until 2014.

65. Mr. Thomas also gave evidence that in 2003, the practice of acting on both sides of a conveyancing transaction was not encouraged. Now, it is not permitted. Indeed there was a Law Society Practice Direction dated December 2001 which stated that "The Law Society has not decided to prohibit acting for both sides but great care must be taken". It would appear that Mr. O'Gorman did not follow any of the matters set out in this Practice Direction. In particular, he does not appear to have considered whether there might be undue influence or to consider whether the plaintiff and her husband should be separately legally advised or to have taken full instructions on all the relevant family circumstances as suggested in the Practice Direction.

66. Mr. Thomas also gave evidence that not paying the vendor anything for the transfer of a family home was "highly unusual" – which I would have thought was a significant understatement.

67. I accept the evidence of Mr. Thomas as set out above and indeed it was not the subject of any serious challenge by the first defendant.

Evidence of the first defendant's expert

68. The first defendant also called an expert in conveyancing – Mr. Barry Lysaght – who provided a written report for the assistance of the court and also gave oral evidence before the court.

69. Mr. Lysaght was admitted to the roll of solicitors in 1975 and has practised in private practice since then. His principal areas of practice have been in conveyancing. For many years he was the senior and managing partner of the firm of Malone and Martin Solicitors, Market

Street, Trim, County Meath. Since 2017 he has been a consultant in that firm. He has lectured in the Law Society in Land Registry practice and capital gains tax. He has also co-authored Law Society publications on complex conveyancing and land registry practice. He has practiced in conveyancing matters for over 46 years.

70. Mr. Lysaght was also present in court for some of the evidence given by Mr O’Gorman.

71. Mr. Lysaght in his oral evidence said that, in his opinion, the first defendant had been negligent in the conduct of this case and in relation to the various matters set out by Mr. Thomas. In other words, Mr. Lysaght concurred with Mr. Thomas’s expert opinion that Mr O’Gorman had been negligent towards the plaintiff in the conduct of this matter.

72. In the light of this evidence the first defendant belatedly conceded liability for negligence towards the plaintiff on the third day of the trial.

73. However, despite the fact that Mr. O’Gorman’s own expert gave his opinion that Mr. O’Gorman was negligent in the conduct of this matter towards the plaintiff, Mr. O’Gorman still sought to defend his conduct of this case by arguing that the plaintiff had obtained independent financial advice from a Mr. Martin Leahy. Mr. Leahy was a witness as to fact, not an expert, and he gave evidence before the court.

The evidence of Mr. Leahy

74. Mr. Leahy worked for Permanent TSB for some twenty years as a full time employee. He then set up his own company in 2002 and was self-employed for a period of twelve years until 2014. He then joined Ulster Bank and later Bank of Ireland.

75. Mr. Leahy said that in the period in which he ran his own company – from 2002 to 2014 – he was a qualified financial adviser and his company gave financial advice on mortgages, life insurance policies and pensions. Mr. Leahy gave evidence that he had arranged a mortgage for Ms. Pauline Gibson and her husband for their family home at Fortfield Drive, Terenure. Sometime afterwards Ms. Pauline Gibson contacted him to indicate that her parents wanted to

raise some money on their family home. He was told by Ms. Pauline Gibson that her parents needed some money to do home refurbishments on their family home and also to purchase a taxi. Initially he said that he thought the plaintiff and her husband were going to get 50% of the loan amount being borrowed but he subsequently resiled from that evidence.

76. Mr. Leahy, acting on behalf of Ms. Pauline Gibson, negotiated a loan with First Active in or about September 2003 for €190,000. The purpose of the loan was stated to be to purchase Ms. Gibson's parents' home. It was described on the application form as a residential investment property.

77. Mr. Leahy said that he met the plaintiff and her husband on two occasions. On the first occasion he met them on a Sunday afternoon in the second defendant's home in Fortfield Drive at about 4.30 to 5pm. He went into Ms. Pauline Gibson's home and he was introduced to the plaintiff and her husband. He said he then asked Ms. Pauline Gibson to go into the kitchen so that he could have time alone with the plaintiff and her husband. Mr. Leahy said they were looking for a loan; they discussed an equity release scheme and they discussed a "seniors' money" scheme which apparently was a bank equity release scheme for persons above the age of 60. Mr. Leahy however said that he advised them against that because he worked out that that the plaintiff and her husband would only obtain a small amount of money under this "seniors' money" scheme. He said he advised them it was not worth their while to pursue this option.

78. Mr. Leahy said that he understood the plaintiff and her husband needed money to refurbish their family home and also they needed funds to purchase a new taxi for Mr. Gibson because he needed to change his car to buy a taxi.

79. Mr. Leahy said it was also explained to him that the plaintiff had a bad credit history. As this was never put to the plaintiff in cross examination counsel for the plaintiff indicated that he was prepared to recall the plaintiff on this point. However Mrs Gibson had already given

evidence that she never had any bank loans or any other debts in her life and she was never cross examined on this point. I accept Mrs. Gibson's evidence on this matter and I reject entirely Mr. Leahy's evidence that either the plaintiff or her husband had a bad credit history - which appears to be based on nothing at all except what Ms. Pauline Gibson might have told him for her own reasons.

80. I have also set out above Mrs. Gibson's evidence that they never needed any money to renovate their home because her husband always did these renovations himself and that she sold her Nissan Micra to enable her husband to purchase a new car for his taxi business. In the circumstances I accept Mrs. Gibson's evidence on these matters and I reject Mr. Leahy's evidence on these matters. It may well be that Mr. Leahy was informed of these matters by Ms. Pauline Gibson rather than by the plaintiff.

81. Mr. Leahy said that his understanding was that the plaintiffs were to receive half the money and that the second defendant would receive the other half of the money.

82. This would mean on the basis of the €190,000 mortgage that the plaintiffs would receive a sum of approximately €95,000. However, Mr. Leahy subsequently resiled from this evidence and said that he believed that the plaintiffs were going to receive a sum of approximately €60,000 from their daughter i.e. a sum of €40,000 to engage in home renovations and a sum of approximately €20,000 to purchase a taxi.

83. It was put to Mr. Leahy in cross examination that neither the plaintiff nor her husband had received a single penny from the transaction and that the entirety of the amount of the loan had been given to the second defendant Ms. Pauline Gibson. Mr. Leahy, extraordinarily, said that he was not aware of that fact until it was put to him in the witness box.

84. Mr. Leahy purported to give evidence as an independent financial advisor who, he said, gave independent financial advice to the plaintiff and her husband. In my view Mr. Leahy was not an independent financial adviser to the plaintiffs. Mr. Leahy was an agent of First Active

and other banks. He was paid commission by the banks on all of the mortgages that he obtained for his clients. His client in this case was either the bank and/or the second named defendant Ms. Pauline Gibson. It was Ms. Pauline Gibson who was seeking to raise the mortgage. Mr. Leahy arranged the mortgage with First Active and Mr. Leahy was paid commission from First Active.

85. Mr. Leahy gave evidence that, in his view, he gave independent financial advice to the plaintiff and her husband about this transaction. However when one steps back and looks at this transaction Mr. Leahy would have the court believe that he gave independent financial advice to the plaintiff and her husband:

- (1) that the plaintiff and her husband should transfer their only asset, their family home to their daughter for a sum of €60,000;
- (2) That the plaintiff and her husband should transfer their family home to their daughter in return for receiving €40,000 to engage in home renovations, and €20,000 to purchase a taxi.
- (3) That the plaintiff and her husband should transfer their family home to their daughter and receive approximately €60,000 for their home when it was worth €250,000 at that time;
- (4) That Ms. Pauline Gibson would receive the balance of the €190,000.

86. Thus, Mr. Leahy would have the court believe that he gave independent and prudent advice to the plaintiffs in circumstances in which they were going to sell their only asset (namely their family home) to their daughter which had a value of approximately €250,000 and that they would receive €60,000 in return. The matter only has to be stated in these terms to realise how ludicrous this financial advice was.

87. It is also clear from Mr. Leahy's evidence that he never explored with the plaintiff and her husband whether they could obtain a car loan (or whether they could obtain a second hand

car for a sum less than €20,000) and repay this car loan with the proceeds of Mr. Gibson's taxi business. He also never sought any detail about the renovations which they sought to conduct in their own home.

88. What is so extraordinary about this case is that Mr. Leahy accepted in his evidence that this was the only case in which a client of his purportedly sold their only asset (namely their family home) to another party and did not receive a penny in return. He said there was another case he remembered in which the parents sold their home to their daughter, but they received all of the proceeds of sale because the father in that case was dying and all parties wished him to have money to enjoy his final years. That was not the case here.

89. Mr. Leahy knew that his real client (the second named defendant) was going to obtain most of the money in this case. He also knew (because of his knowledge of Ms Pauline Gibson's financial position) that Ms Gibson and her husband had four investment properties which they rented out as hostels. All of these four properties, according to Mr. Leahy, were in positive equity, some of them substantially so. The money which Ms. Pauline Gibson was raising was so that she could carry out refurbishments either to these properties or to her family home. He had no answer as to why this money could not have been raised by way of additional mortgages on the four investment properties.

90. Mr. Leahy said in his evidence that he made it clear to the plaintiff and her husband that they were engaging in considerable risks in what they were doing. The court does not accept this evidence and regards it as self-serving and unreliable.

91. By contrast Mr. Leahy had connections with the second defendant and her husband Mr Frank Brady. He had organised a residential mortgage for them a couple of years earlier; he organised this mortgage for Ms. Gibson and was paid a commission for so doing; he also acted for them in respect of one other mortgage some four to five years later.

92. I find as a fact that the plaintiff met Mr Leahy on one occasion only in Fortfield Drive. I also find on the balance of probabilities that the plaintiff's evidence is to be preferred and that Mr Leahy did not give any proper financial advice to the plaintiff or her husband. Even if Mr Leahy did give financial advice he was clearly not an independent financial adviser.

93. Evidence was also given by Mr O'Gorman – and indeed by Mr Leahy – that Ms Pauline Gibson wished to obtain the money in haste and that there was some urgency about the raising of these funds. It appears that this transaction was conducted from start to finish in unseemly haste by Mr O'Gorman and Ms Pauline Gibson to the manifest disadvantage and prejudice of the plaintiff and her husband.

Events from May 2009 to April 2014

94. The events which occurred between May 2009 and April 2015 are complex and difficult to follow. Documents were amended, re-dated, and purportedly re-executed. In addition it is clear that the signatures of the plaintiff and her husband were forged on certain documents. These events are however important to understanding what did or did not happen in this case.

95. These events, in summary, show

- (i) that Mr. O'Gorman falsified dates on various documents for the purposes of misrepresenting to the Revenue Commissioners the true date of the transfer to avoid stamp duty interest and penalties;
- (ii) that Mr O'Gorman apparently destroyed the two pages of the purported original deed of transfer from 2003;
- (iii) that Ms. Pauline Gibson (or a person procured by her) forged the signatures of the plaintiff and her husband on a deed of transfer dated 2009 and subsequently 2010; and

- (iv) that Mr. O’Gorman signed these documents confirming that the plaintiff and her husband had signed these documents in his presence when he knew that to be untrue.

Events in May/June 2009

96. On or about 2009, it appears that Mr. O’Gorman was being asked by the bank whether he had complied with his undertaking in relation to the loan drawn down in 2003.

97. Mr O’Gorman gave evidence that he then reviewed his file and, according to his evidence, he saw that the deed of transfer and the mortgage had not been stamped or registered. It is also clear that Mr. O’Gorman must have realised that he had not investigated whether the vendors had good marketable title to the property.

98. Mr. O’Gorman gave evidence that when he went back to the file, he saw the deed of transfer from the plaintiff and her husband to Ms Pauline Gibson. This is a two page document. He said that the first page of this deed of transfer was dated 2003 (but not any further specific date). He gave evidence that he removed this page and either put it back on the file or “put it in the bin”. As the file has been lost it is not possible to confirm whether he put it back on the file. Given what followed, I am of the view that, on the balance of probabilities, given Mr. O’Gorman’s own admission that he could have put it “in the bin” and, given the purpose of re-dating the document (i.e. to misrepresent the date to the Revenue Commissioners), that it is more likely that Mr O’Gorman did indeed put it in the bin. He then gave evidence that he printed off a new front page for the deed of transfer and dated it 22nd May, 2009. In effect therefore Mr O’Gorman admitted under oath that he falsified the purported date of transfer in 2003 and re-dated it 22nd May, 2009.

99. Mr. O’Gorman admitted in evidence that he did this because he had not stamped the deed within the required number of days of the execution of the deed as he was required to do. As a result he would have had to pay the stamp duty plus interest and penalties for six years, –

interest and penalties for which he himself would be personally liable, not the client – as he admitted in his evidence. Mr O’Gorman thus admitted that he falsified the date of the deed of transfer in order to present a false date to the Revenue Commissioners for the purposes of not paying tax under the stamp duty legislation. This in itself is an extraordinary action for a solicitor and officer of the court.

100. It appears that a sum of stamp duty was subsequently paid on this purported deed of transfer dated 22nd May, 2009 in the sum of €5,775 on 12th June, 2009.

101. The date on the mortgage was also re-dated 22nd May, 2009.

102. Mr O’Gorman admitted therefore that he removed and destroyed first page of the purported deed of transfer from the plaintiff and her husband to Ms Pauline Gibson which he said was dated 2003 and created a new document to date the deed of transfer 22nd May, 2009.

103. Mr. Thomas gave evidence that it was unacceptable professional practice for Mr. O’Gorman to falsify the date of the transfer and to date the transfer document 15th May, 2009 if in fact the purported transfer was done in or about September 2003.

104. Mr. Thomas also gave evidence that it was unacceptable practice for a solicitor to falsify the date of the transfer and to date it May 2009 if the purported transfer was supposedly done in or about September 2003 – if the object and/or effect of this was to represent to the Revenue Commissioners – for the purpose of stamp duty – that the deed of transfer was entered into in May 2009 if it was purportedly entered into in September 2003.

Application by Mr O’Gorman to the Land Registry for registration of the transfer transferring the property to the second defendant

105. After the deed of transfer had been stamped on 12 June 2009, Mr O’Gorman applied to the Land Registry on or about 22nd June, 2009 to register the deed of transfer and the mortgage.

106. The deed of transfer which Mr. O’Gorman submitted to the Land Registry for registration was a two-page document and on page 1, line 1 the transfer was dated – in

handwritten script – 22nd May, 2009. This was the date put written into the deed of transfer by Mr. O’Gorman when it was submitted for stamp duty purposes. The document was then date-stamped 12th June, 2009 when the sum of €5775.00 stamp duty was paid.

107. This application was rejected by the Land Registry and on 29th June, 2009 the Land Registry wrote to Mr. O’Gorman to indicate that the transfer could not be registered until certain defects or omissions had been remedied.

108. It appears that Mr. O’Gorman then asked a person called Rita in his office to telephone the Land Registry on 7th July 2009 to inquire as to the reason for the rejection.

109. After this telephone conversation, on 4th September, 2009 the Land Registry wrote to Mr. O’Gorman to say as follows: -

“Dear Sir/Madam,

As per my telephone call with Rita in your office on 7th July, 2009, the original unconditional consent of the local authority to the transfer lodged is required for this application. As we have not received a response to our query, please find documents and validated fees relating to the above application returned herewith”. (emphasis added).

110. This letter clearly indicated that the unconditional consent of Dublin City Council to the transfer was required before the deed of transfer could be registered.

111. Mr. O’Gorman in his evidence said that he then asked Ms Pauline Gibson to obtain the consent of Dublin City Council to the transfer.

112. It appears that arising out of this Ms. Pauline Gibson contacted Dublin City Council in relation to this matter.

Forging of signatures

113. Subsequently on 15th March, 2010 (*i.e.* some seven months later), a transfer order was drawn up by Dublin City Council which vested the property at 27 Castletymon Green, Dublin

5 in the name of the plaintiff and her husband in fee simple. A copy of this transfer order was produced in court. It is dated 15th March, 2010 and it provides that that property vests on 15 March, 2010 in fee simple in John and Marie Gibson. This transfer order was signed by Mr Paul Keegan a Dublin City Council official and countersigned by the Dublin City Manager.

114. The document is – apparently – also signed by the plaintiff and by her husband. It is also signed by Mr Kevin O’Connor solicitor and his office stamp is imprinted on the document.

115. Ms Gibson however gave evidence that this was not her signature. She examined the document carefully before giving this evidence. I accept her evidence on this matter. It is clear that her signature is forged.

116. Mrs. Gibson and her son Damien also gave evidence that the purported signature of Mr. Gibson was not his signature either. I accept their evidence on this matter for the reasons set out below.

117. It is clear therefore that both their signatures were forged. As the only person who was involved in obtaining this transfer from Dublin City Council was apparently Ms. Pauline Gibson, I am of the view, on the balance of probabilities that Ms. Pauline Gibson forged (or procured another person to forge) her parents’ signatures on this transfer from Dublin City Council.

118. Mr O’Gorman’s evidence was that, after he received this transfer from DCC, dated 15 March 2010, he was about to apply to the Land Registry – for a second time – to register the deed of transfer. However he decided to get the plaintiff and her husband to re-execute the deed of transfer.

119. Initially his evidence was that he met the plaintiff and her husband in Devitt’s pub to re-execute the deed of transfer. Subsequently however he said that he contacted Ms Pauline Gibson and asked her to come into his office to collect the deed of transfer and get it re-executed by her parents. He said that, in order to do this, he removed the second page of the original

purported deed of transfer dated 2003 (*i.e.* the purported original signature page) and he prepared a blank signature page to be re-executed by the plaintiff, her husband and indeed by Ms Pauline Gibson. He said that he was not sure whether he put the second page of the deed of transfer back on the file or whether he put it in the bin. Again I am of the view that, on the balance of probabilities and given the background it is more likely than not that Mr O’Gorman put the original signed page (if it even was signed) in the bin.

120. Ms. Gibson, according to Mr. O’Gorman, then came back to his office with the deed of transfer apparently re-executed by her parents.

121. The purported signatures of the plaintiff and her husband are on the signature page.

122. However Mrs Gibson said categorically in evidence that this was not her signature. Although the plaintiff has difficulties with her eyesight, she examined the document carefully in the witness box with the assistance of an illuminated magnifying glass and took her time before giving her evidence in this matter. I am of the view that her evidence on this matter is credible and beyond dispute.

123. The plaintiff also gave evidence about her usual signature. In addition, copies of her normal signature on her passport, her driving licence and other documents were handed into court and I had an opportunity of comparing her signature with the signature on this re-executed document purportedly dated 22nd May, 2009. It is clear on even a cursory examination that the two signatures are completely different. I therefore find as a fact that this was not the plaintiff’s signature.

124. The plaintiff also gave evidence that the purported signature of that of her husband was not his signature. I accept the plaintiff’s evidence in this matter. She was clearly familiar with her husband’s signature.

125. The court also heard evidence from Mr. Damien Gibson the plaintiff’s son. He also gave evidence that this signature was not that of his father. Copies of his father’s signature on

other documents were also handed into court. Having reviewed same, I find as a fact that the plaintiff's husband's signature and the signature in the re-executed documents are not the same signature.

126. Mr. O'Gorman signed his name on the said document which states "re-executed by the said John Gibson and Marie Gibson in the presence of Kevin O'Gorman." It is clear however from the evidence that in fact these signatures were not re-executed in his presence at all.

127. I find as a fact therefore based on the evidence that the signatures of the plaintiff and her husband on this purported deed of transfer are not their signatures, that their signatures were forged and that, on the balance of probabilities, Ms. Pauline Gibson forged the signatures of her parents (or procured another person to forge the signature of her parents) on this document.

128. Mr. O'Gorman had now received a copy of the transfer order from DCC granting the fee simple to the plaintiff and her husband. He had received this from Ms. Pauline Gibson who had apparently obtained it from Dublin City Council.

129. It is also clear from the evidence that Mr. O'Gorman made no attempt whatsoever to contact the plaintiff or her husband in any way at this time (i.e. from 2009 to 2014) to advise them in any way about the transaction. His only communication at the time was with Ms. Pauline Gibson. In the circumstances, Mr. O'Gorman was clearly negligent again towards the plaintiff and her husband in or about 22nd May, 2009 and/or 16th March, 2010 and thereafter in the conduct of this transaction.

Second application to Land Registry

130. Having received the transfer order from Dublin City Council vesting the property in fee simple in the names of Mr. and Mrs. Gibson on 15th March, 2010, Mr. O'Gorman then applied a second time to the Land Registry on 24th March, 2010 to register the deed of transfer from the plaintiff and her husband to Ms. Pauline Gibson. This application is stamped by the Land

Registry as having been received on 26th March, 2010. A copy of this application was produced in court.

131. However, just a few days earlier, on 18th March, 2010, Mr. Terence O’Keeffe, the Law Agent for Dublin City Council had applied to register the plaintiff’s property in the name of John and Marie Gibson, as a result of the transfer order which had been signed by Dublin City Council on 15th March, 2010. This application was date stamped as having been received by the Land Registry on 23rd March, 2010.

132. As a result, the Land Registry wrote to Mr. Terence O’Keeffe on 13 July, 2011 in connection with his application for registration and stated as follows:-

“Please show how the freehold interest in the property can be vested in John and Marie Gibson by transfer order dated 15th March 2010 as under a deed of transfer dated 22nd May 2009 lodged herein on 26th March 2010 by Kevin O’Gorman Solicitors, the leasehold interest in folio DN67335L was transferred by John and Marie Gibson to Pauline Gibson. Please advise and if you require to withdraw your application please advise accordingly.”

133. Mr. O’Keeffe replied to the Land Registry on 10th August, 2011 to say that he had written to Mr. O’Gorman in relation to this matter and requested that Mr. O’Gorman contact the Land Registry in this regard.

134. It appears that Mr. O’Gorman did not do anything even when prompted to do so by Mr. O’Keeffe.

135. Subsequently, on 26th November, 2012, the Land Registry/Property Registration Authority (“PRA”) wrote again to Mr. O’Keeffe to indicate that there had been no reply to this query. Mr. O’Keeffe wrote to Mr. O’Gorman on 28th November, 2012 again in relation to this matter.

136. Eventually, some seven months later, Mr. O’Gorman wrote to Dublin City Council and stated:-

“It is our understanding that in order for both of our applications to be completed that we should first withdraw our client’s application in the Property Registration Authority and have the deed of transfer re-dated for a date after your application in this matter. Therefore it is our intention to request the return of the deed of transfer signed by our client and lodged under dealing number [...] In order that we can amend and re-execute same. We intend amending the date deed of transfer to 16th March 2010 which is the day after the transfer order of 15th March 2010. We think that this is the best approach and we have discussed same with the PRA [Property Registration Authority]. Therefore there would be no need to withdraw your application. We would appreciate if you would please let us know that you would be agreeable to same.” (Emphasis added)

137. Seven days later, Dublin City Council replied to this letter saying that they had no objection to the proposed amendment set out in this letter.

138. It appears, therefore, that some three years and three months after the transfer order from Dublin City Council that Mr. O’Gorman then set about changing the date on the first page of the deed of transfer from 22nd May, 2009 to 16th March, 2010. As the transfer from DCC to the plaintiff and her husband was dated 15th March, 2010, Mr. O’Gorman then amended in handwriting the date on the first page of the deed of transfer from 22nd May, 2009 to 16th March, 2010 so that the deed of transfer was now dated the day after the DCC transfer order. A copy of this document was put in evidence and I have reviewed it. To the right of these manuscript amendments to the date, are three initials which purport to be the initials of the plaintiff, her husband and Ms. Pauline Gibson. However, Mrs. Gibson has given evidence that those initials are not her initials and nor are the initials those of her husband. I accept her evidence. In the

circumstances, I find as a fact that these initials are also forged on this document probably by the second defendant and/or persons procured by her to do so.

139. It appears that, on 22nd July, 2013, Mr. O’Gorman wrote to the PRA in relation to this matter. The PRA then replied to Mr. O’Gorman on 15th August, 2013 returning the deed of charge and advising that the amendment required full re-execution.

140. On 3rd September, 2013, Mr. O’Gorman wrote to the Land Registry/PRA. in connection with this property and enclosed:-

- (1) The amended deed of transfer (duly initialled); and
- (2) The amended deed of charge (duly initialled)

and asked that both of these be registered as a matter of urgency.

141. Eventually, on 24th April, 2014, the Property Registration Authority wrote to Mr. O’Gorman to state that *“the above application has been completed”*. It appears that the documents which were registered at this time were the purported deed of transfer from the plaintiff and her husband to their daughter dated 16 March 2010 and also the mortgage between Ms. Pauline Gibson and First Active.

142. The following month, Ulster Bank wrote to Mr. O’Gorman on 15th May, 2014 in relation to the loan to Ms. Pauline Gibson:-

“We refer to the above and to your solicitor’s letter of undertaking in relation to the above property upon which the bank continues to rely:

‘More than six months have elapsed since drawdown and to date we have not received the registered security and title documents.’”

The letter asked Mr. O’Gorman to revert within ten working days.

143. Ulster Bank then appointed Beauchamps Solicitors as their external legal advisors and, on 11th July, 2014, Beauchamps wrote to Mr. O’Gorman saying:-

“I write in relation to the above and our phone conversation yesterday. We can see that the above application has now been completed in the PRA. We have enclosed a copy of the application status for your ease of reference. We now ask that you furnish us with the title deeds for the above property in order that we may forward them on to our clients. Upon receipt of such our client may then release you from your undertaking.”

144. Subsequently Mr. O’Gorman appears to have forwarded the title deeds to Ulster Bank as on 9th April, 2015, Ulster Bank wrote directly to Mr. O’Gorman in relation to the borrower, Ms. Pauline Gibson, and the said property, acknowledging receipt of the title deeds and confirming that Mr. O’Gorman was discharged from his undertaking.

ASSESSMENT

The fraud of Ms. Pauline Gibson

145. In the light of all of the evidence which has been adduced in this case and in circumstances where Ms. Pauline Gibson has failed to enter an appearance, instruct solicitors or appear in person to defend any aspect of these proceedings, I have no hesitation in finding that Ms Pauline Gibson acted in such a way in this transaction as to defraud her parents. She engaged in a scheme the object and/or effect of which was to obtain a fraudulent transfer of her parents’ family home to herself and, in return, she paid her parents nothing and never disclosed to her parents the true nature of the transaction. As a result of this fraud, Ms Pauline Gibson obtained a mortgage from First Active in the amount of €190,000 in or about September 2003.

146. I also conclude, based on the evidence, that the signatures of the plaintiff and her husband on the purported deed of transfer dated 22nd May 2009 (and then re-dated 16th March 2010) are forgeries and that on the balance of probabilities, their signatures were forged by Ms. Pauline Gibson or a person on her behalf.

147. I therefore conclude that Ms Pauline Gibson engaged in a deliberate and calculated fraud and deception on her parents in or about September 2003 and/or in 2009/2010 and as a

result of this fraud and/or deception purported to obtain the transfer of the plaintiff's family home from her parents to herself by means of a purported transfer in 2003 and/or in 2009/2010 and to obtain a loan from First Active based on this fraud.

The negligence of Mr. O’Gorman

148. As set out above, I find as a fact that Mr O’Gorman was acting on behalf of the plaintiff and her husband (as well as acting for Ms Pauline Gibson) in respect of a purported transfer of the family home by the plaintiff and her husband to their daughter in or about 2003.

149. It is also clear beyond doubt Mr O’Gorman was negligent in the advice which he gave (or more correctly did not give) to the plaintiff and her husband in connection with this transaction. I accept the evidence of Mrs Gibson that she did not receive any or any proper advice in respect of this transaction from Mr O’Gorman. It is also clear that she never received any advice in writing from Mr. O’Gorman. I do not accept Mr O’Gorman’s evidence that he advised the plaintiff and her husband as to the full nature of this transaction.

150. I accept the expert opinion of the plaintiff’s expert that Mr O’Gorman was negligent in respect of all aspects of his conduct of the case in relation to the plaintiff and her husband.

151. I also accept the evidence of the defendant’s expert, Mr Lysaght, that Mr O’Gorman was negligent in the conduct of this case towards the plaintiff. Indeed Mr. O’Gorman eventually conceded, through his counsel, after his expert had given evidence, that he was negligent in the conduct of this case towards the plaintiffs.

152. It is clear on any view of the matter that Mr. O’Gorman was grossly negligent in the provision of legal advice to the plaintiff and her husband and failed to advise them adequately or at all in relation to the enormous step they were taking in purportedly transferring their one and only asset, their family home, to their daughter for no consideration.

153. Mr. O’Gorman’s evidence is that when the loan cheque was received by him, he paid the entirety of the loan cheque to Mrs. Pauline Gibson. In other words, not a cent of it went to

his clients, Mr. and Mrs. Gibson. This is so extraordinary as to merit some comment. It is difficult to understand how Mr. O’Gorman who was acting for both purported vender and purchaser, and who therefore owed duties of care to both parties, could possibly think that he could advise his clients, Mr. and Mrs. Gibson to transfer their property to their daughter without receiving a cent in return.

154. It is also clear the first defendant was negligent in the performance of his duties to the plaintiffs by acting on behalf of both parties to the transaction and by failing to advise the plaintiff to obtain independent legal advice.

155. This is particularly so in circumstances where this was a transaction of such extreme improvidence that no reasonable solicitor could possibly have advised their client to engage in such a transaction.

Undue influence

156. Mr. O’Gorman also, for some reason, sought to rely in some way on the decision of the Supreme Court in *Carroll v Carroll* [1999] 4 IR 241. Mr. O’Gorman sought to defend this case on the basis that the plaintiff and her husband had obtained independent financial advice – even if they had not obtained independent legal advice. I have set out above the evidence of Mr. Leahy and my assessment of that evidence. I am of the view that Mr. Leahy did not provide independent financial advice to the plaintiff and her husband.

157. In the light of the evidence I have no difficulty, on the facts of this case, in finding that there was a presumption that Ms. Pauline Gibson had undue influence over the plaintiff and her husband. Moreover there was no evidence to show that that presumption was rebutted. I therefore find as a fact that Ms. Pauline Gibson did exercise undue influence over her parents and that this transaction could also be set aside on that basis.

158. However it must be emphasised that there is no evidence that Mr. and Mrs. Gibson ever formed the intention to enter into a voluntary transfer of their family home to their daughter or

to sell it to her or to gift it to her in any way. Indeed, all the evidence is that they did not intend to do so.

159. It is clear therefore that there are no defences which could have been offered by Mr. O’Gorman and indeed it is extraordinary that he has put the plaintiff to the time, expense and stress of a three-day High Court case to defend what was clearly indefensible from the very start.

Was there an actual transfer of the family home from the parents to Ms Gibson in or about September 2003?

160. The next question I have to consider is whether as a matter of fact the plaintiff and her husband ever signed a deed of transfer in or about September 2003 purporting to transfer the property to Ms. Pauline Gibson.

161. Ms. Gibson has given evidence that although she signed a number of documents she does not know what documents she signed. However, she also said that she and her husband never intended to transfer their home to their daughter.

162. Because Mr. O’Gorman has lost the file in this case no copy of the original deed of transfer purportedly dated 2003 and signed by the plaintiff and her husband has ever been put before the court.

163. In this regard as set out above, Mr. O’Gorman’s evidence was that, in or about 2009, he reviewed the file and saw the two-page deed of transfer on the file. He said that he removed the cover page which, he said, had the date of 2003 (with no day or month), and put this page “in the bin”, printed off a new page and re-dated it 22nd May, 2009. He did this in order to represent to the Revenue Commissioners that the deed of transfer had only been dated 22nd May, 2009. He then submitted it to the Revenue Commissioners for stamping. The document was stamped by the Revenue Commissioners on 12th June, 2009. There is therefore no evidence, in writing, that the document was ever dated in 2003.

164. In relation to the second page of the two-page deed of transfer (*i.e.* the signature page), again the original signature page is not available to the court because the file has been lost. However, even if the file had not been lost, Mr. O’Gorman gave evidence that he removed the second page (which he said was the original signature page with the signatures of the plaintiff and her husband) from the document, that he “put it in the bin” and that he then printed out a new signature page and asked Ms. Pauline Gibson to get her parents to re-execute the deed at some date between 15th March, 2010 and 26th March, 2010. Moreover, Mr. O’Gorman countersigned that signature page representing that Mr. & Mrs. Gibson had signed the document in his presence when that was not true.

165. Thus, the only evidence that the Deed of Transfer was signed by the plaintiff and her husband in 2003 is that of Mr. O’Gorman. However I am not prepared to accept the evidence of Mr. O’Gorman as being credible or truthful on any of the issues involved in this case, given the manner in which he has conducted this transaction – in circumstances where he falsified dates and destroyed original documents – for the purposes of misrepresenting to the Revenue Commissioners the purported date of the transaction.

166. There is therefore no deed of transfer whatsoever with the actual signatures of Mr. & Mrs. Gibson – whether dating from 2003 or any date – which purports to transfer the property from them to their daughter. It is possible that Mr. O’Gorman was so careless in the conduct of this transaction that he might have omitted to get them to actually sign this document. The only evidence that they did sign, is the evidence of Mr. O’Gorman which evidence I am not prepared to accept as credible or reliable.

167. In the circumstances I would therefore conclude that there is absolutely no evidence before the court that the plaintiff and her husband ever signed a deed of transfer in or about September 2003 which either purported to transfer their family home to their daughter or which did transfer their family home to their daughter. Moreover, as the plaintiff stated clearly in

evidence that it was never her intention, or that of her husband, to transfer the property to her daughter, I have concluded that on the balance of probabilities, the plaintiff and her husband did not sign any deed of transfer in or about 2003. In the circumstances I find therefore as a matter of fact that the plaintiff and her husband never transferred the family home to Ms. Pauline Gibson in 2003 and never intended to do so.

168. When one turns to the deed of transfer which was dated 22nd May, 2009 and then subsequently had its date amended to 16th March, 2010, I find as a fact that the plaintiff and her husband did not sign this deed of transfer, that their signatures were forgeries and that these forgeries were carried out by Ms. Pauline Gibson or by someone procured by her to do so. As these signatures are forgeries it is clear that neither the plaintiff nor her husband ever transferred their family home to their daughter at a date in 2009 or 2010 by means of this deed of transfer.

169. I am fortified in this conclusion by Ms. Thomas, the plaintiff's expert, who said in evidence that there is no evidence of a transfer made in 2003 and that it is clear that any purported deed of transfer made in 2003 was not relied on by Mr O'Gorman in his registration of the Deed of Transfer in 2009. Instead he relied on the 2009 Deed of Transfer (as re-dated in 2010) which clearly contained the forged signature of the plaintiff and her husband.

170. Mr. Thomas also stated in evidence that if the court accepted the plaintiff's evidence that the signatures on the 2009/2010 transfer were not those of the plaintiff and her husband, then no good title passed to Ms Pauline Gibson in 2009/2010. I accept Mr Thomas's evidence on this matter.

171. Mr. Thomas said that if the plaintiff did not transfer the property in 2003 or 2009/2010 to Ms Pauline Gibson then Ms. Pauline Gibson had no title to the property. I accept Mr. Thomas' evidence on this matter also.

Conclusion

172. As set out earlier in this judgment all parties requested that I should make my findings in relation to liability only in relation to the first and second defendants and then allow all parties to consider what further issues require to be considered in the light of this judgment.

173. I am of the view that there was no transfer by the plaintiff and her husband to the second defendant of their family home in or about September 2003 or indeed in 2009/2010.

174. Even if I had found that there was such a purported transfer in 2003 I would have had no hesitation in setting it aside on the grounds of fraud and/or undue influence.

175. I have also concluded that Mr. O’Gorman was negligent in the performance of his duties towards the plaintiff in 2003 and indeed throughout the transaction.

176. The implications of these conclusions are matters which will now have to be considered by the parties. I will, if necessary, hear further evidence and legal submissions on these matters at a later date.
