

THE HIGH COURT

FAMILY LAW

IN THE MATTER OF PART III OF THE FAMILY LAW ACT, 1995
AND IN THE MATTER OF THE WITHDRAWAL OF THE UNITED KINGDOM
FROM THE EUROPEAN UNION (CONSEQUENTIAL PROVISIONS) ACT 2020,
SECTION 126 THEREOF
AND IN PARTICULAR IN THE MATTER OF AN APPLICATION SEEKING
RELIEF AFTER THE GRANTING OF A FOREIGN DIVORCE

Between:

A. O. C

Applicant

-AND-

F. L. N

Respondent

Ex tempore Judgment of Ms. Justice Nuala Jackson delivered on the 9th day of October 2024.

1. A motion was issued by the Applicant in this case dated the 14th March 2024 seeking, *inter alia*, relief pursuant to section 35(2)(a)(ii)(II) of the Family Law Act, 1995 ('the 1995 Act'), setting aside the purported transfer of a portion of the Respondent's share in [REDACTED COMPANY NAME] (Company Registration Number [REDACTED]) to third parties, on the basis that same is a reviewable disposition intended to defeat the claim of the applicant herein. Section 35 of the 1995 Act provides

for a form of statutory Mareva-type injunction where it is successfully asserted that court assistance is required for the preservation or restoration of assets in order to ensure that reliefs granted by the court or to be granted by the court are not defeated through asset dissipation or disposition by a litigant.

2. The Applicant herein seeks relief after a foreign divorce pursuant to Part III of the 1995 Act. Section 23 of the 1995 Act permits the granting of a variety of Part II reliefs in this context. The availability of section 35 relief in the context of Part II reliefs as is clear from the definition of “relief” in section 35(1) of the 1995 Act. Leave to issue proceedings seeking Part III reliefs was granted by this Court (Jordan J.) on the 29th of July 2022 and, in consequence, section 35(2)(a)(ii) is engaged. The Special Summons, issued pursuant to such leave, was issued on the 10th August 2022.
3. Section 35 states that a “*reviewable disposition*”, *in relation to proceedings for the grant of relief brought by a spouse, means a disposition made by the other spouse concerned or any other person but does not include such a disposition acted in good faith and without notice of an intention on the part of the respondent to defeat the claim for relief.*”
4. Where the disposition of assets has been made (as opposed to being intended to be made), sub-section (2)(a)(II) of section 35 states that the court may: “*if it is satisfied that that other spouse or other person has, with that intention, made a reviewable disposition and that, if the disposition were set aside, relief or different relief would be granted to the applicant, make an order setting aside the disposition.*”
5. It is important to point out that the provisions of section 35(5) are engaged in this instance – the application under sub-section (2) of section 35, having been made by motion issued in March 2024, relates to a disposition that took place less than 3 years before the date of the application, the disposition under consideration herein having been made on or about the 18th October 2021. In this instance, the statute is clear that the intention to defeat the applicant’s claim for relief is to be presumed, unless the contrary is shown. Therefore, the burden of proof in respect of the intention to defeat is reversed from the usual and is on the respondent/transferor/dispenser.
6. The proofs in relation to section 35 are:
 - (a) That the relevant proceedings have been or are to be instituted. This is the position here.
 - (b) That there has been a disposition of property. This is clearly the position here (this will be addressed further below).

(c) That the disposition has a materiality in the context of the relief or reliefs the court may grant. I am of the view that this is clearly the case here given the very considerable value of the assets transferred particularly when viewed in the context of the disclosed assets of the Respondent.

(d) That the defences (available to the transferee) of being a bona fide purchaser for value without notice of an intention to defeat the claim for relief are not engaged.

7. The motion was grounded upon the Affidavit of the Applicant sworn on the 14th March 2024. In this Affidavit, the deponent exhibits a Form B1C – Annual Return General made to the Companies Registration Office (CRO). This form states that the return was made up on the 18th October 2021. It references a financial year from the 9th July 2020 to 8th July 2021. It relates to the company, [REDACTED] and references share transfers by the Respondent to Ms. B and Mr. S (Junior) of 40% and 20% respectively by the Respondent on the 18th October 2021. Prior to this purported transfer, the Respondent was the 100% shareholder of this company. The date of the submission (ref. number [REDACTED]) is not stated on the document but the signature page states the 29th October 2021. I would point out that this is the same date as the email which it would appear was sent by the Applicant’s English solicitor, Mr. AC, to the Respondent, at 11.20 am on that date, informing him of Orders made in the divorce proceedings before the English courts, which email is referenced in the letter of Mr. C to Mr. Ciaran Haran, the Applicant’s solicitor in the within proceedings, dated the 18th May 2023. This email is included in Exhibit “E” of the Affidavit of Ciaran Haran of the 29th February 2024. The Affidavit of the Applicant and the exhibits therein clearly prove that there was a disposition of assets by the Respondent within the three year period prior to this application.
8. I do have to, additionally, make reference to the fact that I am somewhat confused by the fact that in the exhibited Form B1C Annual Return, the signature page which relates to that submission, Reference Number [REDACTED], indicates that it was signed by Mr N and Ms B on the 29th of October 2021. However, when I examined the papers that I hold in this case, I find that I have been provided with a Companies Office search in respect of [REDACTED COMPANY NAME] carried out by ‘Search4Less Company’ which has a date stamp of the 9th May 2023 at 18:31 and, in addition to that, indicates

that it relates to the last annual return 21st of March 2023. Apart from the fact that that search indicates that Mr. N at that time was the 100% shareholder, which would appear to be a date long after the date referenced for the transfer date, I was also extraordinarily confused and not a little alarmed and required an explanation, as to why in the documents listed in that search, there is a reference to the submission which is exhibited in Mr. Ciaran Haran's affidavit, namely submission number [REDACTED]. In that Companies Office search, under date received, it indicates that that submission, which is referenced to as Form B1C – Annual Return General, there seems to be the same document. It seems to be received on the 18th of October 2021 and I am entirely at a loss to know why a document signed on the 29th of October 2021 could be received by the Companies Office on the 18th of October 2021. That is a matter that might be addressed when this matter comes back before me as to why it is that a document was signed some 11 days after it would appear to have been registered in the Companies Office.

9. The background to this application is that the Respondent held a 100% shareholding in the company, [REDACTED]. This is a valuable company both in terms of assets and income, holding a substantial property portfolio and having a significant rental income. The Applicant instituted proceedings for divorce in England in 2019. Those proceedings had a long and tortuous trajectory, particularly in relation to disclosure. Substantive orders in respect of financial reliefs were granted by the English courts (Deputy Judge Raggett) on the 8th October 2021. The Respondent has not complied with the terms of these Orders of the English courts and the within proceedings were instituted seeking Part III relief. The exhibited document Form B1C referred to above indicates that the share transfers to the third parties were made on the 18th October 2021, some 10 days after the making of the English order.
10. The Respondent filed a replying Affidavit in respect of this motion. He also submitted a number of statements signed by him. I have considered and had regard to all of these documents.
11. Having considered the evidence and documents submitted by the parties, I previously indicated that I was satisfied that the requirements of section 35 had been fulfilled and I made an Order setting aside the transfers of the shareholdings to the third parties pursuant to section 35 of the 1995 Act.
12. However, it is important that the rights and entitlements of all persons are protected, and therefore, in accordance with the decision of White J. in **CM v. AM [2013] IEHC**

636, I directed that the setting aside order be subject to any submission that the third parties wished to make. I directed that notice of the application and the documentation pertaining to it together with details of the setting aside order made be served upon the third party transferees and that they be informed of their entitlement to make submissions to the court. The *in camera* rule was lifted to enable this. The third parties both attended in court. They were afforded the opportunity to avail of legal advice and to file Affidavits. Ms. B filed an Affidavit herein. Mr. S determined not to do so.

13. Regarding the Affidavit of the Respondent in the context of this motion, being the Affidavit sworn on the 21st March 2024, this avers to an acrimonious history of issues between the parties. In this Affidavit, he avers that he *“had informed the English Court in December 2020 that it was not possible for me to engage there, and I withdrew completely from the process.”* In relation to [the company], he avers *“According to my very limited information our joint contribution was approximately €800,000 (40%). This would also represent our percentage of the director’s loan. The company was lately funded by [Ms. B] who has administered the company for the past 5 years. Ms. B is also a 40% shareholder since October 2021 and Mr. S Jnr has 20% of the shares but would be entitled to approximately 50% of the directors loan.”*
14. [The Respondent’s company] was established in 2013. At all times material to this application (prior to 2021) the Respondent was the 100% shareholder. There is no reference to a Mr. S Snr in any documents which I have seen and there is no reference in any documents which I have seen to any loans being advanced by Mr. S Jnr. No supporting documentation for this averment has been provided to me. It is to be assumed that such financial interests would be evidenced in the CRO returns and/or in the company financial statements. I am at a loss to understand the reference to the Respondent having very limited information. He is now and has (save for the transaction under consideration) at all material times been the sole shareholder in this company. I have repeatedly asked the Respondent to provide documentation to support the position which he puts forward. This has not occurred. In particular, I have directed the production of the share transfer agreement in respect of the transfer to the third parties. This has not been produced. I have been repeatedly told that this matter is being dealt with by an accountant, a person was named and an email from this person was produced, but no Affidavit was sworn by this professional and she was not proffered as a witness.

15. Additionally, the Affidavit of the Respondent avers to “the company being lately funded by Ms. B” but this does not accord with the Affidavit of Ms. B herself. No details of or documentation relating to such funding was provided and it is incomprehensible why such funding would be needed when [the company] owns numerous properties and has a vibrant rent roll. Ms. B’s Affidavit avers that the share transfer was to pay her for services rendered to the company. She makes no reference to having funded the company. The Affidavit of the Respondent makes no reference to agreements to transfer since 2018 or inheritance issues pertaining to Mr. S Jnr or his father’s estate. There is no explanation for the timing of the transfers, indeed the timing is unclear as I have not seen the share transfer agreement(s).
16. It should further be noted that I requested information in relation to the taxation implications of these transfers and neither the transferees nor the transferor seemed to have any information in this regard and no taxation steps appear to have been taken. There is a complete dearth of paper trail in respect of any aspect of these purported transfers which would in any manner explain them whether in accordance with the averments of Mr. N or Ms. B.
17. Mr N’s affidavit repeatedly references his desire for a negotiated settlement. Regarding this, I must make two comments; I greatly support the desirability of a negotiated settlements but this is not something that is within the gift of the court. If parties succeed in achieving negotiated settlements, this is commendable and such settlements require careful consideration by the court. Secondly, negotiated settlements require transparency with regards to disclosure and, regrettably, this is a position which has not been achieved in this instance. Mr. N refers to having, and I refer to his first Affidavit in this regard, “completely disengaged with the UK Court in 2020”. Regrettably for both parties, this is not a step which he was entitled to take without consequence. It is simply not possible for a litigant to decide to “disengage” from proceedings without consequences arising. Mr. N says that he was unaware of Judge Raggett’s order. I cannot definitively say whether this was so or not, but he was aware of the proceedings, he was aware they were ongoing and he was aware that all his assets were in play in the proceedings. Indeed, Ms. B, in response to my question regarding this, informed me that she was aware of the proceedings from the outset. However, it must be reflected that the proximity of the purported share transfers with the order of the English Court does give rise to suspicion. I further cannot accept the averment of Mr. N that he was “resident and domiciled in [REDACTED] at this time”. The documents filed in the

Companies Registration Office, signed, it is indicated, on the 29th of October 2021, and indeed all of the other documentation with the CRO, make no reference to [REDACTED name of country]. These documents state Mr. N's address to be [REDACTED Irish address]. The CRO filings and searches are confusing to say the least but common to them is the absence of reference to [REDACTED name of country]. Mr. N also filed signed statements in the course of this application, in particular a signed statement of the 1st of March 2024. This makes no reference to [the company with which this application is concerned]. It references past dealings with Mr. S (Snr) and certain properties, but these matters would not appear relevant to the present application. I do note that Mr. N complains that his records pre-2018 have been retained in the family home, presumably by the Applicant. However, I would simply comment that none of the pertinent documents post 2018 were provided in the context of this application.

18. I am of the view that there is no evidence that there was valuable consideration in this instance and that any such contentions as are proffered are entirely unsatisfactory. I say this because the Affidavits of Mr. N and Ms. B are contradictory. Mr. N refers to the funding of the company by Ms. B. Ms. B makes no such reference in her affidavit. Secondly, there is a failure to comply with the direction of this court in relation to disclosure. In that regard, I would refer in particular to the share transfer agreement. Thirdly, there is no documentation supportive of this being a genuine transaction and again I refer to the absent of production of the share transfer agreement and the lack of any taxation information or documentation, and indeed, the difficulties and inconsistencies arising from the CRO filing to which I have previously referred. Fourthly, Ms. B indicated that the reason why she could not be paid as an employee of the company for whatever services she is rendering is because she was a director of [the company] and it is a property rental company. However, I note that the CRO filings indicate that her directorship started on the 6th of October 2021, precisely 2 days prior to English Order and 12 days prior to the transfer, so whatever difficulty being a director might have presented, it did not exist prior to a date extraordinarily proximate to the purported transfer. Fifthly, I am of the view that the reference to financial support for the Respondent by Ms. B is, again, somewhat incomprehensible for me, particularly in circumstances where there is no evidence of this in the financial statements and no reason has been given as to why it would be necessary and, in that regard, I refer to the Affidavit of Mr. Heron in relation to this application. As regards the issue of good faith

and an absence of notice, Ms. B informed the court that she was at all times aware of the matrimonial proceedings in England between the parties. Therefore, she knew the assets of the Respondent were in play in these circumstances and consequently she must have known that, if transferred to her, this would defeat or attempt to defeat, orders which might be made in the English matrimonial proceedings.

19. Mr. S (Jnr), a gentleman who regrettably faces life challenges, informed me that he did not want the shares and appeared to know little about the transactions alleged and did not file an Affidavit, although given ample opportunity to do so. There would appear to be inheritance issues which need to be investigated and pursued in respect of Mr. S (Jnr)'s entitlements from the estate of his father. Information in this regard is opaque and Mr. S (Jnr) should clearly seek legal advice. Indeed both transferee's were so advised and the information relayed to me as to whether such legal advices were obtained is inconsistent. However, these issues seem on the information before me at present, seem to be unrelated to the [NAME OF COMPANY] shareholdings. There are two properties in respect of which issues arise concerning the beneficial interest of Mr. N. There is the property at [ADDRESS 1 REDACTED]. Legal title to that property would appear to be in the names of two third parties. I still do not know who the beneficial owner is or how this came about. Mr. N says Mr. S(Jnr) is the beneficial owner. Ms. C says Mr. N is the beneficial owner. The obvious relevant witnesses are the legal owners but I have heard nothing from them. The second property is the property at [ADDRESS 2 REDACTED]. Again, legal title is in the names of third parties. I have been provided with a copy of an agreement from 1994, however, I do not know the true position regarding beneficial ownership of this property. Issues do arise regarding these properties but these are not pertinent to the current application which relates to the shareholding in [. As I say, these are matters that will have to be looked at in the context of the ongoing case. The third matter which I want to refer and I will refer to it for the sake of completeness because yet again, I am not sure how relevant they are to the application before me. There are continued assertions of monies being due to Mr. S (Snr). I am unsure whether this is by [COMPANY REDACTED] or by Mr. N or by Mr. C. However, this is for the estate of Mr. S (Snr). There is nothing in the documentation before me that shows that to be of any significance in relation to shareholding or the holding of shares in [COMPANY REDACTED] and, if it is being pursued by Mr. N, is a matter for him to adduce evidence in relation to. If there are monies due by Mr. N, a company or anybody else to Mr. S (Snr), I have seen nothing

of those monies being pursued by the estate. I have seen nothing in relation to how that indebtedness arose and it will be dealt with in due course as and when it arises. However, it cannot and does not give any justification for or reason for a random share transfer in the midst of matrimonial proceedings.

20. An Affidavit was sworn by Ms. B in the context of this application. Ms. B's affidavit is brief. The first matter that I want to refer to in relation to it, is that she refers to the setting aside of the transfers being unjust. I say that this is not the test but rather the statutory principles applicable which have been set out by me at the start of this judgment. In addition to this, I am not sure that I can agree in relation to the assertion of unjustness because it is clearly unjust that matrimonial proceedings have not finalised some five years post commencement and indeed that there were efforts made to alter the asset base of one of the parties in the midst of trying to finalise those proceedings. Ms. B also refers to extensive work having been carried out by her managing the assets. She says *"I confirm I was contacted by the Respondent in or around 2018 to assist him with general managing and operation of his property business conducted mainly through his company [COMPANY REDACTED]. This work comprises, inter alia, the extensive managing of assets in the company, which as per the 2023 accounts have extensive properties with a value in excess of 2 million and rental income of 204,000 per annum."* The transfer of payment for such work, and that Ms. B would wish to be paid for it, is understandable but I must conclude, it simply makes no legal or commercial sense to me as to how a transfer of 40% shareholding, which on Ms. B's Affidavit would amount to assets with a value of 800,000 and an income of 80,000 per annum, would be justified in relation to a management role for a three-year period, which I appreciate has continued since. In addition, I do not know how this would be justified where there is no tax return, no tax advice, no documentary proof, and is inconsistent with the averment of Mr. N where he says there was financial support given to the company, which Ms. B does not mention at all. In this regard, I would refer to paragraph 7 of her Affidavit which avers: *"I confirm I have received no other remuneration for this work, other than the shareholdings which are received from the Respondent, which was to cover my involvement with the company, [COMPANY REDACTED], and to grow the company in all respect."* This is not consistent with the first affidavit sworn by Mr. N in these proceedings and, in addition to that, I must make reference to and essentially concur with the averment at paragraph 13 of the Affidavit of Mr. Haron where he avers: *"Finally, I say that Ms. B has not exhibited any evidence*

that the company is actually growing or has acquired any assets since her alleged involvement and I say that this is telling in term of the artificiality of the explanations.”

I must finally refer to the latest Affidavit of Mr. N which was sworn on the 13th of September 2024. Again, there is reference to relocation to [REDACTED] and again, I must reiterate that this is not consistent with the filings made by Mr. N or on his behalf in the CRO. Mr. N again makes reference to the tragic and undoubtedly emotionally upsetting deaths of both Mr. N's brother, J, and also of Mr. S (Snr) in or about 2019. However, I cannot see that there is any linkage between these deaths and the paper trail of documentation before and the purported transfer of the assets with which this application is concerned. Subject to the evidence being produced, it seems to me that these are matters which may have relevance in the context of the application which I am hearing at the full substantive hearing, but not in the context of this application.

21. Therefore, having giving an opportunity to the transferee's in this matter to make submission in relation to my order, I am confirming the Section 35 order, setting aside the transfers and I am granting a freezing Order under Section 35 of the 1995 Act in respect of any disposition concerning Mr. N's shareholding in [COMPANY REDACTED], and further, I am granting a freezing Order under Section 35 of the 1995 Act in relation to Mr. N in anyway interfering with his assets or interests held by him in that company.
22. I am going to reserve the costs of this application to the hearing.