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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 20/069339/A01

Delivered: 26/04/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Between:

BRENT LARMOUR

Plaintiff/Respondent

and

JOAN LARMOUR

Defendant/Appellant

**Mr Larmour appeared as a Litigant in Person
Mr Hunt KC with Mr McClurkin BL (instructed by Allsopp Tully Clements, Solicitors)
for the Defendant/Appellant**

McBRIDE J

Introduction

[1] This is an appeal from orders made by District Judge Collins dated 26 April 2021 and 7 July 2021, ordering the sale of 14 Invernook Drive, Belfast (“the Property”) on foot of an equity civil bill issued by Mr Brent Larmour seeking sale of the property in lieu of partition.

[2] This appeal involves a consideration of whether the court has a discretion under the Partition Acts to refuse to make either an order for sale or partition in lieu of sale in respect of jointly owned property and, if so, in what circumstances the court can exercise that discretion to make no order. It further involves consideration of the powers afforded to the court under Article 49 of the Property (Northern Ireland) Order 1997 to impose a stay, suspension, or conditions on an order for sale made pursuant to the Partition Acts.

[3] The appellant, Mrs Larmour, was represented by Mr Hunt KC and Mr McClurkin of counsel. The respondent, Mr Larmour, acted as a litigant in person.

Factual Background

[4] Joan Larmour is a patient, and this appeal is brought on her behalf by her controller ad interim, Mr Neil Allsopp. Mr Allsopp is a solicitor and was appointed controller ad interim by order of the High Court on 16 July 2021. The respondent, Brent Larmour, is Joan Larmour's son.

[5] Joan Larmour is aged 81 years. She is retired and in receipt of benefits. She has resided in the property since 1991. She is in a relationship with Mr Richard Price-Stephens who resides in Carnlough, Co Antrim.

[6] Joan Larmour and her son, Brent, purchased the property in the sum of £33,550 from the Northern Ireland Housing Executive under the Right to Buy Scheme in or around 2002. The purchase was at a significant discount as Mrs Larmour was the housing executive tenant of the property. The purchase was funded by a 25 year interest only mortgage with Alliance and Leicester now Santander.

[7] The property consists of a mid-terrace house with a living room, kitchen, hall, and upstairs bathroom and two bedrooms.

[8] The property was conveyed into the joint names of Joan and Brent Larmour on 4 November 2002 and, accordingly, each owns a 50% share in the property. The conveyance was registered in the Registry of Deeds on 28 November 2002.

[5] Initially, the parties resided together in the property. After a number of years, the respondent left the property. He is married to Katharine Larmour, and they reside in Belfast. Mr Larmour commenced employment in the civil service in November 2022 having previously been unemployed for a period of time. His wife works part-time.

[6] The relationship between Joan and Brent Larmour broke down approximately 12 years ago and they are now estranged.

Chronology of Proceedings

[7] The following chronology is based on the evidence, agreed documents filed and the submissions of the parties:

- On 13 October 2020 Brent Larmour issued an equity civil bill seeking sale in lieu of partition of the property under the Partition Acts 1868 and 1876.
- On 26 April 2021 DJ Collins upon hearing from Mr Brent Larmour, a litigant in person, and in the absence of any appearance or representation on behalf of Joan Larmour made an order that the property be placed on the market for sale. Further the court made a number of consequential orders including an order that Joan Larmour "vacate the property on a weekly basis, on Wednesdays and

Thursdays from 10am to 5pm throughout the sale period until the completion of sale, in order to facilitate the sale process.”

- On 6 July 2021, Allsopp Tully Clements, Solicitors, wrote to the court office advising that they acted on behalf of the proposed controller of Joan Larmour. They outlined that Joan Larmour lacked capacity and upon receipt of direction from the Office of Care and Protection they intended to apply to set aside the judgment.
- On 7 July 2021 DJ Collins made a further order confirming the order for sale and made further consequential orders in respect of the sale. The order was endorsed with a penal notice setting out the consequences if there was non-compliance.
- A letter dated 6 July 2021 was brought to DJ Collins’ attention on 8 July together with a further email from Joan Larmour’s solicitors which attached a letter from Annette Carter, social worker, dated 1 June 2021.
- On 15 July 2021 DJ Collins granted a three week stay on the order.
- On 16 July 2021 Neil Allsopp, solicitor, was appointed controller ad interim for Joan Larmour by the High Court.
- On 5 August 2021 Dr Barbara English, Consultant Psychiatrist, issued a medical certificate in respect of Joan Larmour for the Office of Care and Protection.
- On 17 August 2021 DJ Collins lifted the stay on the order. No parties were in attendance at this hearing.
- On 20 August 2021 Mr Allsopp emailed the court office seeking a further stay of the order dated 7 July 2021. The matter was then listed for mention on 31 August 2021 and the parties were ordered to meet prior to that date.
- On 7 September 2021 a Notice of Appeal was issued.
- On 26 November 2021 the High Court extended time within which Joan Larmour could appeal. This order was made after the parties made submissions in respect of delay.

The Appellant’s Submissions

[8] The appellant seeks to oppose sale on the basis that there are special circumstances. In particular, she seeks to rely on the expert evidence of Dr Barbara English, Consultant Psychiatrist, and Ms Annette Carter, social worker, who both opine that it would be contrary to her welfare to move from the property in

light of her diagnosis of dementia, her age, her long association with the property and the lack of care plan to move her to another residential setting.

[9] In all these circumstances the appellant submits that the court should exercise its discretion to refuse to order sale of the property. The appellant further submits that as the property is not capable of being partitioned practicably the court should exercise its discretion to make no order.

[10] In the event the court determines that it lacks discretion to make no order and must make either an order for partition or an order for sale in lieu of partition, the appellant requests that the court exercises its powers under the Property (Northern Ireland) Order 1997 to impose a stay, suspension and/or conditions on the order for partition or sale.

Submissions of Brent Larmour

[11] Mr Larmour submits that the order for sale should be upheld. Although he accepts that the court has power to attach conditions to this order, he submits sale should not be delayed.

[12] He submits that the appellant has not set out any good reason why the court should not order sale. He did not accept that there is an established dementia diagnosis and further submits that even if there is such a diagnosis this is not a basis upon which the court can refuse to order sale.

[13] He further points to credibility issues in respect of his mother's assertion that she resides in the property and is orientated to life in East Belfast. He submits that she spends most of her time with her partner in Co. Antrim and that the property remains largely unoccupied and abandoned.

[14] Brent Larmour further submitted that refusal to order sale would be prejudicial to him and to his wife due to the emotional burden placed on them and the financial burden placed upon him, and the practical difficulties created by the continuation of joint ownerships including problems relating to the neglect of the property and the non-engagement by his mother in respect of managing the property and dealing with the mortgage. He submitted that joint ownership is no longer tenable because of the breakdown in the familial relationship. The inability of the parties to co-operate, he submitted has led to dilapidation of the property with impact on equity, inability to renegotiate the mortgage, inability to sell and has created security risks. He further submitted that the ongoing joint ownership causes psychological stress to him and to his wife.

The Evidence

[15] The court heard evidence from Dr English, Consultant Psychiatrist, Ms Annette Carter, social worker, Mr Brent Larmour and Mr Neil Allsopp, solicitor, and controller ad interim. It further received affidavit evidence from Katharine Larmour, wife of Brent Larmour.

[16] As appears from the submissions of the parties there are essentially six factual issues which require to be addressed and the court therefore proposes to deal with the evidence in respect of these issues. They are as follows:

- (i) The medical condition of Joan Larmour.
- (ii) The mortgage/financial position.
- (iii) The maintenance/condition of the property.
- (iv) The residence of Joan Larmour.
- (v) The irretrievable breakdown between the parties and its impact on joint ownership.
- (vi) The impact of joint ownership on Brent Larmour and his wife.

Medical condition of Mrs Larmour

[17] The court heard evidence from Dr English, Consultant Psychiatrist, with specialism in the psychiatry of old age. She adopted her report dated 5 August 2021 in which she opined that Mrs Joan Larmour lacked the necessary capacity to manage her property and affairs by reason of mental disorder. She further opined that removal from her home in the short to medium term would reasonably be expected to cause her significant psychological distress and result in hastening the deterioration of her functional dependence.

[18] Dr English confirmed that the medical notes set out that Joan Larmour had a diagnosis of dementia since July 2019. She was seen by Dr Chew on 30 June 2020 when he thought the possible cause of her dementia was Alzheimer's Disease. On 16 August 2021 he felt that Alzheimer's Disease was now the probable cause of her dementia. A CT scan of her brain was conducted which identified stroke disease making the cause of dementia most likely mixed vascular and Alzheimer's Disease. On a mini mental state examination, she scored 21 out of 30 (less than 26 is considered abnormal), with deficits in orientation and time, and recall of new information.

[19] At interview on 28 July 2021 Joan Larmour indicated clear psychological distress at the possibility of losing her home and Dr English noted that she appeared anxious and distressed that her son was trying to put her out of the house. She had physical agitation with wringing of her hands. Dr English also noted during the assessment marked difficulties by Joan Larmour in forming and accessing new

memories as a result of her dementia such that she could reasonably be expected to struggle with orientating to a new housing situation and change of geographical area. She felt that an unfamiliar area would be therefore highly likely to result in a need for increased assistance/deterioration in functional dependence. Dr English felt, for example, that she would experience difficulties in navigating a new locality as her memory deficits meant she could not learn new routes and could no longer go to the shops. Her inability to learn new skills meant she could not learn how to operate new devices in the kitchen for example a new cooker or washing machine. Consequently, a move from her home would adversely affect her ability to continue to live independently.

[20] Dr English was unable to give an exact timescale when Joan Larmour would no longer be able to live independently. In her report she had stated that she could remain living independently in her home in the short to medium term. She stated however that she could not be definitive as timescales very much depended on the individual. She accepted that it was unlikely that Joan Larmour would be still living alone by 2027, the date when the mortgage term ended.

[21] Under cross-examination Dr English confirmed that short to medium term meant from two to three months up to two years. She did, however, make it clear that each case was person specific and an important factor in living independently was the acceptance of assistance from others. She said she could not be specific as to when Joan Larmour could no longer live independently with the assistance of a domiciliary care package. She further accepted under cross-examination that history is important in diagnosis. She accepted that the social worker had advised her Joan Larmour was orientated in the locality and was able to find her way to the shops and post office and then return home again. She accepted that if the evidence established Joan Larmour lived somewhere else most of the time this, whilst not affecting her diagnosis of dementia, would mean she had a less robust view on the likelihood of significant distress being caused to Joan Larmour if she could not live in the property.

Ms Carter, Social Worker

[22] Ms Carter gave evidence that Joan Larmour had been a service user of the East Community South West Team in the Belfast Health and Social Care Trust since 18 December 2018. Ms Carter's first involvement with Joan Larmour was when she supervised the student social worker involved with Ms Joan Larmour from 25 March 2021. As of 10 August 2021, she became Joan Larmour's social worker.

[23] She had concerns about Joan Larmour's welfare in light of the court order ordering sale of the property. As a result, she wrote to the Office of Care and Protection on 1 June 2021 setting out these concerns. In particular, she set out her concern that Joan Larmour had consistently expressed a desire to remain living in her own home notwithstanding her diagnosis of dementia. Secondly, she indicated that Ms Joan Larmour had nowhere else to live and, thirdly, her view that Ms Larmour

was able to navigate within her own home and area and that a move to an unknown environment could be detrimental to her health and well-being.

[24] Ms Carter outlined that Joan Larmour was an 81 year old retired lady who lived alone in property jointly owned with her son Brent. Ms Larmour had originally been referred to the community social worker in December 2018 by her partner, Richard Price-Stephens, due to her memory difficulties. Thereafter, she had been allocated a social worker.

[25] During her involvement with Ms Carter she stated that Joan Larmour had consistently expressed a wish to remain in her home and had become distressed and tearful especially when she had discussed with her the impact of the court order for sale and the need to move.

[26] Ms Carter stated that Joan Larmour had nowhere else to live. Her other son, Joel, lived in England and was unable to care for her. Further, she could not live with her partner as Ms Carter had carried out an assessment on 6 June 2022 of Mr Price-Stephens' home and found that it was completely unsuitable for Joan Larmour's needs. There was no kitchen and no adequate washing facilities and there were very steep stairs which were rotting. Further, there was a hole in the floor left by a dentist's chair as the property had previously been used as a dental surgery.

[27] Ms Carter considered that the only alternative housing options for Joan Larmour consisted of housing executive, privately owned property, specialist support housing or residential care. She considered that there were difficulties in respect of each of these options. Firstly, in respect of the housing executive option there was a long waiting list and, further, moving address meant she had to reapply for a care package to the new address which would lead to delay in securing such a package. In respect of the other housing options there were very long waiting lists and at this stage Joan Larmour did not meet the criteria. Ms Carter also opined that as all alternative housing options involved a move to an unfamiliar environment this would adversely impact on Joan Larmour's independence.

[28] Ms Carter outlined that in her experience Joan Larmour enjoyed attending to her appearance and home and she made no secret of the fact that she spent time in Carnlough with Mr Price-Stephens. As a result of the Court order she was not present at the home on Wednesdays and Thursdays, and she therefore spent Wednesday overnight with Mr Price-Stephens in Carnlough.

[29] Ms Carter outlined details of the care package in place for Joan Larmour since July 2022. It consists of a daily morning and evening 30 minute call by one carer. The carer gives assistance with dressing, breakfast/tea and administering blister pack medication. There are additional calls on Tuesdays and Fridays to assist with shopping and laundry. The carers gain access by putting a code into a box which keys to the property.

[30] In her evidence Ms Carter also referenced a number of reported incidents when Joan Larmour was upset by her son Brent's behaviour. For example, on 29 July 2022 when Ms Carter visited Joan Larmour she presented as very upset because she alleged Brent had been in her home in the early hours of the morning. Further, on 12 August 2022 Joan Larmour made a call to the emergency social work service reporting a panic attack because her son was in the house and had allegedly stolen her purse and was trying to get her out of the house. At one stage Ms Carter was so concerned about her mental state that she phoned the estate agent to have the 'For Sale' sign taken down.

[31] Under cross-examination she confirmed that her views about Joan Larmour were based on information provided by her GP, Dr Chew, next of kin, Ms Larmour, various notes and records and also from her own observations and investigations. Her opinion was based on her own professional judgment of all the information available to her. She confirmed that she made unannounced calls and during her visits she was satisfied that there was food in the fridge and that there had been no build-up of post. Although she was aware some calls had been cancelled in July 2022 to allow Ms Larmour to go on holiday with her partner, otherwise there was no issue with the care package not being taken up.

Findings of fact on Joan Larmour's health

[32] I am satisfied on the unconverted evidence of Ms Carter that Joan Larmour suffers from dementia. Brent Larmour did not challenge this diagnosis save to say that he did not accept it. He has not provided any contrary medical evidence and in his evidence did accept that his mother was prescribed medication for Alzheimer's Disease.

[33] I am further satisfied that as a result of her condition she has deficits especially in her short term memory. This adversely affects her ability to learn new skills such as using a new oven or learning a new route to walk from her home to the shops and back again. Accordingly, if the court finds that the property is her primary residence, I would be satisfied that a move from the property where she has lived since 1991 and from where she is presently able to live independently, cook and look after herself and walk to the shops and post office would adversely impact on her functioning and well-being and, ultimately, on her ability to continue to live independently albeit with the assistance of a domiciliary care package.

[34] On the basis of the evidence of Ms Carter and Dr English I am satisfied that Joan Larmour wishes to remain in her home and would be very stressed and upset if she had to move home, as evidenced by her presentation to them. Such a move, I find, would therefore impact negatively on her mental health and well-being.

[35] I am also satisfied on the evidence of Ms Carter that there is presently no suitable alternative accommodation available for Joan Larmour. A move to a housing executive property or private rented accommodation would necessitate the need to reapply for a care package, something which is difficult to obtain in the present climate

and delay in securing such a package could mean she cannot live independently. Further, the other options are unsuitable. There are very long waiting lists for residential homes and Mr Price-Stephens' home is unsuitable for her needs. More importantly, any move from her primary residence to an unfamiliar environment would adversely affect her ability to live independently.

Mortgage/financial position

[36] It is uncontroversial that the mortgage term ends in October 2027 and the capital balance due to be paid at the end of the term is approximately £31,500. The current monthly payment is £44.41 per month and this fixed rate ends in December 2022 and may thereafter rise, according to Mr Brent Larmour to between £164-£190 per month. At present there are no mortgage arrears, and the property is not in negative equity. It appears that there is a positive equity of in or around £66,000 based on the fact that the property was agreed for sale in September 2020 for £97,500.

[37] Mr Larmour gave evidence that he and his wife would suffer financial hardship if the property was not sold. In particular, he gave evidence that the payment of the ongoing monthly mortgage payments caused financial hardship as he had been unemployed and was not in receipt of benefits.

[38] He also gave evidence about his wife's health issues and their desire to move to a ground level property as she had mobility problems, and their present accommodation is unsuitable for her needs as it has steep stairs. He stated that he needed to clear the mortgage debt with Santander and have the equity released so they were in a position to buy a suitable property to meet their needs. He also produced documentation which illustrated that the purchase of a second home by them at in or around £160,000 would attract stamp duty of £4,800. If, however, he was released of the jointly owned property then he would be treated as a purchaser of a first home and, in these circumstances, no stamp duty would be payable.

[39] Brent Larmour did not produce any documentation detailing his income, his wife's income, their outgoings, or savings. When questioned by the court he stated that he did not wish to disclose details of his savings. He gave evidence that he had been unemployed for a period and accepted that when unemployed he was not in receipt of benefits. I form the view that this was because his savings were above the threshold for benefit payments. He then advised the court that he was commencing work as a civil servant in November 2022 and that his income would be in around £25,700 per annum. Together with his wife's income, he stated that they would have a total gross income of £40,000 per annum.

[40] On the basis of the evidence I am satisfied that there is no ongoing financial burden placed on Brent Larmour by reason of the monthly mortgage repayments. This is because Mr Allsopp, controller ad interim, gave evidence that there is a monthly surplus in Joan Larmour's income of approximately £310 per month together with capital reserves of £19,500 approximately in an AIB bank account (which amount

had increased as of the date of hearing). I am therefore satisfied that a condition could be put in place in the event that the court does not order sale or delays sale whereby Joan Larmour is made responsible for payment of the monthly interest mortgage payments. This would have the consequence that no financial burden is placed on Brent Larmour regarding monthly payments.

[41] Further, I am not satisfied that an immediate sale of the property is required to meet Katharine Larmour's health needs. Although no medical evidence was produced, I accept her affidavit evidence that she has difficulty going up and down stairs and therefore needs to live in accommodation on one level. I note that she owns her own home and that she and Brent Larmour have a joint income of £40,000 per annum gross together with undisclosed savings. I am satisfied that they could sell their present home and use the proceeds of sale together with a mortgage to purchase suitable alternative accommodation. The mortgage could be financed from their joint income especially as Brent Larmour would now be released from payment of the mortgage on the jointly owned property.

[42] In relation to stamp duty I note that the house in which Brent Larmour now lives is owned by his wife and there was no evidence before the court that stamp duty for a second home would arise if she sells her house and buys an alternative property in her name. Even if the parties wish to buy a new home in their joint names for some reason, I do not consider a payment of stamp duty in the order of £4,800 would, balancing all matters, amount to financial hardship for them. Alternatively, if Brent Larmour and his wife cannot afford to buy another house without release of the equity of the jointly owned property, I am satisfied that they could rent out their present home and then rent suitable alternative accommodation to meet Katherine Larmour's health needs and the new rental could be financed by their income and rental payments obtained for renting their existing home.

[43] In all the circumstances, I am satisfied that no financial hardship would be caused to Brent Larmour if the court were to refuse sale or postpone sale of the property.

[44] I am further satisfied that a delayed sale would not adversely affect the equity in the property subject only to the usual market vagaries.

[45] I further accept that Joan Larmour paid some mortgage monthly interest payments to Santander. As appears from the mortgage statements these payments were made on her behalf by the "DSS." Mr Larmour stated that these payments constituted a loan which had to be repaid and he produced documentation from the Department of Communities regarding the loan. I have read the guidance issued by the Department and it appears from this that payments made after 6 April 2018 have to be repaid but repayment of the loan is only due when the property is sold, or ownership is transferred. I consider that if monies are due to the Department in respect of interest payments made by it then the monies due can be repaid to it upon sale of the property. In such circumstances any monies due to the Department on foot

of this loan can be deducted from Ms Larmour's share of the equity upon completion of sale of the property. This ensures there is no financial loss to Brent Larmour. Accordingly, I am satisfied that the existence of this loan does not place any financial burden on or financial detriment to Mr Brent Larmour.

[46] I am therefore satisfied that a refusal to order sale of the property or a delayed sale would not cause any financial hardship to Brent Larmour or to his wife.

Condition of the property

[47] Brent Larmour gave evidence that Joan Larmour failed to maintain the property thereby causing it to become dilapidated and an insurance risk. He provided photographic evidence of the property which he said demonstrated that it was in a state of dilapidation. He gave evidence that he had carried out works of repair to the boiler, the garden shed and garden fence and in addition had carried out various works to repair water damage caused by a bathroom overflow pipe and a bathroom leak. At other times he had unblocked sinks and toilets. He further noted that bins often remained unemptied, and this had led to a fly infestation. In addition, he considered the property was an insurance risk as it had been left unsecured as gates had been left open when no one was present.

[48] I do not consider that Joan Larmour's occupation of the property has caused any dilapidation which would impact on its value, or which would reduce the equity in the property. Brent Larmour accepted in cross-examination that the repairs carried out by him were of a "fairly modest nature" and that the only permanent damage was staining to carpet. He also accepted in cross examination that when the property was recently agreed for sale, he only had to do some cosmetic works before marketing it. He did not call any evidence that there were any structural defects to the property or anything which would reduce its value or marketability and there was no suggestion that the condition of the property had any negative effect on its value when it was marketed for sale. I, therefore, do not consider that the property is in a dilapidated or neglected state. I am strengthened in this view as Ms Carter's evidence was that the property was suitable for Joan Larmour's needs.

[49] Maintenance is an ongoing issue for all properties, and this will need to be addressed in respect of this property going forward if the property is not to be sold or in the event sale is postponed. The social worker's report stated that any repairs were to be reported by Joan Larmour's partner, Richard Price-Stephens, so tradesmen could be sourced if required. I am satisfied that such an arrangement would be an appropriate means to deal with ongoing maintenance issues in the event the property is not to be sold immediately.

[50] On the basis of all the evidence I am not satisfied that the condition of the property is such or the need for on-going maintenance is such that it would require the immediate sale of the property.

Residence of Joan Larmour

[51] Brent Larmour stated that his mother did not reside at the property on a permanent basis but rather lived with her partner at Carnlough, and accordingly, this undermined the evidence of Dr English and Ms Carter that her dementia meant she needed to remain in the property.

[52] He gave evidence of, in his words, “intense monitoring” of Joan Larmour’s residence in the property and he provided the court with a detailed chronology of this monitoring. A review of this chronology shows that he visited the property during the two periods from 27 July 2021 to 29 August 2021 and 14 December 2021 to 22 January 2022. During these periods he attended at all hours of the day and night and sometimes several times each day. In total he carried out approximately 49 visits to the property when he entered the property and took over 100 videos and photographs.

[53] Mr Larmour produced these photographs and videos of these visits, and the court viewed a sample selection of these. He relied on these photographs and videos to prove that the property was largely unoccupied by his mother. He pointed, in particular, to the fact that she was not present when he attended; the fact the photographs showed nothing had changed in the photographs over the period of his monitoring; the fact there was unopened mail; and the fact there was an unopened pharmacy package whose date stamp showed it had been unopened for several days.

[54] I do not accept Brent Larmour’s submission that his mother does not primarily reside in the property. Joan Larmour has never sought to hide from the social worker that she stays away overnight from the home on occasions. She has made arrangements with Social Services whereby she has cancelled care visits so that she can go on holidays with Mr Price-Stephens. In addition, Social Services are aware that she vacates the premises on Wednesdays and Thursdays in accordance with the court order and stays overnight with Mr Price-Stephens on Wednesday evenings. I therefore do not consider it surprising that she was not present on the Wednesdays and Thursdays when Mr Larmour carried out “monitoring” of the property.

[55] I noted changes in what could be observed in the photographs. For example, I noted that different items could be seen on the kitchen table and in the kitchen sink. I also noted that the items in the bedroom cabinet had been rearranged and different clothes were placed on the bed. Such changes could only have been carried out by someone being present in the property and I am satisfied that Ms Joan Larmour was present in the home and items were moved because she was sleeping in the bedroom and making tea and meals in the kitchen. I am therefore satisfied she was residing in the property during the time when these photographs were taken.

[56] I further note that Mr Larmour largely conducted his monitoring during the Christmas/New Year period and in the summer. These periods coincided with the periods when Joan Larmour was on holidays. It is therefore not surprising that she

was not present in the property during this time, and I consider this accounts for photographs showing a build-up of post and medication.

[57] When challenged why he had not carried out any monitoring during the period between January 2022 and June 2022 Brent Larmour was unable to give a satisfactory answer. I am satisfied this is because he knew that his mother was permanently present in the home during this period and any photographs and videos taken would have demonstrated this. Rather, he chose to show the court only videos and photographs largely taken during holiday periods when she was absent due to holidays. I therefore find he tried to deliberately give the court a misleading impression about her occupation of the property.

[58] I further find that Joan Larmour's primary residence in the home accords with the evidence of the social worker who confirmed that the care package took place at the property and that Ms Larmour was always present at the property when she made unannounced visits. Further corroborating evidence demonstrating that Ms Larmour resided primarily at the property can be gleaned from the fact there is no report that the carers were unable to gain admittance to the home when they attended twice daily basis to provide the care package. More generally, the fact post, medication, mortgage information and the civil bill were all served upon her at this address is evidence which supports the conclusion the property was her primary residence. I am therefore satisfied that although she spends periods of time in Carnlough the property is her primary residence.

[59] Given the evidence of Dr English and Ms Carter I am satisfied that there is no suitable alternative accommodation for Ms Larmour. Even if suitable alternative accommodation was available, I am satisfied that a move from the property to an unfamiliar setting, given her diagnosis of dementia would have an adverse effect on her functioning and impact on her ability to live independently. I also find it would be very detrimental to her psychological well-being.

[60] Having heard the evidence given by Brent Larmour about intense monitoring of the property at all hours of the day and night on his own admission, and the social worker's evidence, which I accept, about the distress caused to Joan Larmour by Brent's presence in the home, I consider Brent Larmour should not be permitted to attend at the property. Although he denied being present in the property when his mother was present and denied stealing her purse and although she suffers from dementia, I nonetheless find that he was present in the property when she was present, and his conduct caused her such upset that she took a panic attack and had to ring the emergency social services line. From all the available evidence I have formed the impression that Mr Larmour has engaged in coercive, bullying, and harassing behaviour. The evidence of intense monitoring I consider amounts to stalking. The evidence he has presented demonstrates that he has visited the premises secretly, often several times per day, at all times of the day and night. Such behaviour caused distress and upset to Ms Larmour especially as she lives alone and has dementia. I have carefully considered the videos and I note that in these he has

acted in a threatening manner and his conduct could be described as stalking. For example, in one video he remained at the site for several minutes whilst she removed her suitcase from her partner's car. This was not only unnecessary but amounted, in my view, to harassment and stalking. I further observed that Mr Larmour throughout the course of the proceedings exhibited a coercive and controlling manner of the court process. This is evidenced by the way in which he addressed the court and his interaction with the court office. Although he accuses his mother of abusing him and alleges her partner is coercive and controlling, I consider that he is the person who has acted in an abusive way towards his mother and that he dislikes her partner because he is a protective person to Ms Larmour.

Irretrievable breakdown in relationship

[61] Brent Larmour gave evidence that he and his mother have been estranged for several years and that due to the irretrievable breakdown in the relationship there are practical difficulties with continued co-ownership. In particular, he pointed to a history of disputes regarding changing locks and various court proceedings in respect of this; the fact maintenance issues could not be discussed and addressed practicably; difficulties in trying to agree the property for sale; her withdrawal from the sale after an offer had been made; her failure to address payment of the interest only mortgage and her non-engagement with the legal proceedings for partition in the county court. He submitted that the breakdown in relations necessitated an immediate sale.

[62] I accept there has been an irretrievable breakdown in the relationship and accept this can give rise to practical difficulties in respect of jointly held property. In the present case, however, I consider all the incidents relating to jointly held property can be adequately addressed. Firstly, the issue of who occupies the property has been settled for some time. Joan Larmour lives alone in the property and Brent Larmour does not reside there. Further, for the reasons I have already outlined, I consider that he should not be permitted to attend at the premises and, in fact, should not be permitted to be on the street in which the property is situate and if necessary, a court order to this effect can be sought. In relation to the question of ongoing maintenance I consider this can be addressed going forward by placing the onus on Joan Larmour through her controller and/or her partner to engage and pay tradesmen for routine maintenance. If more serious works of repair are required the controller, who agreed to deal with such issues on behalf of Ms Larmour should obtain two quotes for such work with each party made liable to pay half the costs of the cheaper quote. Payment of the interest only mortgage also needs to be addressed but this matter does not arise until the mortgage term ends which is October 2027. Prior to that date no issue arises about payment of the monthly interest only mortgage payments as Mr Allsopp indicated Ms Larmour has sufficient funds to discharge these. I further accept that other matters may arise during the currency of the co-ownership which need to be addressed and I accept that in the past there was non-engagement by Ms Larmour. I find this arose as she suffers from dementia. She now has a controller, and I am satisfied that he can attend to all matters which may arise in respect of the property, whether it relates to the mortgage, repairs, sale, or other matters on her behalf.

[63] I, therefore, consider that there is nothing in the facts of the present case whereby co-ownership creates insurmountable difficulties. I consider that all issues pertaining to the co-owned property can be addressed notwithstanding the breakdown in relations between the co-owners.

Detriment to Brent Larmour and his family

[64] Mr Larmour gave evidence that because of the continued co-ownership he was suffering abuse at the hands of his mother causing him stress and which generally had an adverse effect on his mental health. He submitted the continued co-ownership also affected his ability to get on with his life. His wife had mobility problems and therefore they needed to move to suitable accommodation to meet her health needs. As the property remained in joint ownership, he was unable to move house.

[65] Having heard and seen Mr Larmour give evidence, I do not find that he has been abused by his mother. It is my view that he is a very controlling and coercive person and that he has engaged in a course of harassment of his mother. I believe that he knew that his behaviour caused her distress and notwithstanding this he continued to act in this way as his aim was to force her out of the property so he could get the release of equity. I consider that he has shown no concern for his mother's well-being and his only interest is in obtaining money.

[66] For the reasons set out earlier in this judgment I am also satisfied that a delay in sale does not cause Mr Larmour any financial detriment and would not prevent him moving to suitable alternative accommodation to meet his wife's health needs. Accordingly, I am satisfied that continued co-ownership of the property does not cause any detriment to him or his family of either a personal or financial nature.

Legal Framework

[67] The Partition Acts 1868 and 1976 enable one or more co-owner to force a sale or partition of the jointly owned property (partition) against the wishes of the others. In order to bring an action under the Partition Acts the applicant must have a legal or equitable estate or interest in possession of the relevant property. There is no dispute that Brent Larmour holds such an interest and, accordingly, he has locus standi to bring the present application.

[68] Sections 3-5 of the Partition Act 1868 prescribe the circumstances in which a court may order sale in lieu of partition and sets out the different factors which must be taken into consideration when deciding whether or not to order sale. It is well-established that section 3 only applies where the person seeking sale is entitled to less than a half share in the property (see *Grunert v Grunert* [1960] 32 WWR 509).

[69] As Brent Larmour owns a half share in the property the applicable section is section 4 which provides as follows:

“In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, requests the court to direct the sale of the property and a distribution of the proceedings instead of a division of the property between or among the parties interested, the court ‘shall, unless it sees good reason to the contrary, direct the sale of the property accordingly, and give all necessary or proper consequential directions.’”

[70] In the commentary on this section of the Partition Act it states as follows:

“The 4th section makes it imperative on the court, in a certain state of circumstances, to order a sale, unless it sees good reason to the contrary (*Pemberton v Barnes*, L. E. 6 Ch. App. 685). Where the owners of a moiety ask a sale, the onus lies on the parties opposing (*Lys . Lys*, L. R. 7 Eq. 126 ; *Wilkinson v Joberns*, L. R. 16 Eq. 14); per Jessell, MR, *Porter v Lopes* L. R. 7 CD 364. If the parties interested to the extent of a moiety or upwards request a sale, the court shall sell, unless it sees good reason to the contrary—that is, irrespective of the nature of the property, irrespective of the number of persons, irrespective of absence or disability, irrespective of any special circumstances which make the court think it beneficial. The parties interested to the extent of one moiety are entitled to a sale as of right, unless there is some good reason to the contrary shewn; they have not to show any reason for the sale, but a reason to the contrary must be shown (*Drinkwater v Ratcliffe*, L. R. 20 Eq. 528); *Rowe v Gray* L. R. 5 CD 263.”

[71] In respect of the meaning of “good reason to the contrary” the commentary goes on to state as follows:

“The fact that the owners of a moiety desire that there should be no sale is not “good reason to the contrary.” To say so would be to strike the 4th section out of the Act (*Pemberton v Barnes*, L. R. 6 Ch. App. 694). Nor is the fact that the owner of one moiety of an estate is a yearly tenant of the whole property and occupies it for commercial purposes, and also resides thereon, [*Wilkinson v Joberns*, L. R. 16 Eq. 14; *Rougerton v Gibson* 46 LJ Ch 266] nor the fact that a sale of the estate and investment of his share of

proceedings under the directions of the court will materially diminish his income...a sufficient reason why a sale should not be ordered under this section.”

[72] The commentary goes on to state that the court retains a discretion to refuse sale. Examples cited include where it is manifestly asked for through vindictive feelings or is on any other ground unreasonable. Accordingly, the court would not order sale where it was sought merely for the purposes of vexation as per Lord Hatherley in *Pemberton v Barnes* LR 6 Chancery 693 at 695. Further, property may be of a peculiar description so it is not to be saleable or at the time the sale is asked for it may be temporarily very much depreciated in value. Other examples where the court may refuse to order cases include cases where there are peculiar rights attached to property which cannot be properly divided. Additionally, the fact that the property can easily and readily be partitioned may be cited in aid of another objection to sale which might not by itself have prevented the sale.

[73] Accordingly, I find that a co-owner who brings an action under section 4 has an absolute right as the owner of the moiety to seek an order for sale in lieu of partition. He does not have to establish a particular reason for the sale and the only basis on which the court can refuse to order sale is if Joan Larmour can establish “good reason to the contrary.”

[74] The jurisprudence demonstrates that “good reason to the contrary” is a high hurdle for a person opposing sale to overcome. This is because the word “shall” in section 4 creates a strong presumption in favour of sale. Instances of the court refusing to order sale are rare, although there have been a few isolated examples, and more recent jurisprudence suggests that good reason to the contrary is not now interpreted as strictly as it has been in the past, especially where the partition action relates to a matrimonial or family home and/or the request for sale is made by a lender – see *Northern Bank v Haggerty* [1995] NI 211 and *Northern Bank v Adams* (1 February 1996 unreported) High Court (Northern Ireland).

[75] When the court is exercising its discretion to refuse an order for sale as noted by *Mallons v C* and *Pemberton v Barnes* [1871] 6 Ch App 685-690:

“The court must have regard to all the circumstances; but above all, it must look ... to the nature of the property and the interests of the parties.”

[76] The second question which arises in this appeal is whether the court, if it exercises its discretion to refuse sale, has also a discretion to refuse to order partition. In other words, has the court a discretion to make no order in proceedings brought under the Partition Acts.

[77] The leading judgment in respect of this question is *Northern Bank Ltd v Beattie* [1982] NIJB 1. In *Beattie* the plaintiff brought an action for sale of the matrimonial home under the Partition Acts. Murray J held:

“My reading of the law is that if the owner or mortgagee demands a sale this is strictly an alternative remedy to a physical partition and a physical partition is not practicable the sale is the only possible order. I draw attention to the words ‘the sale ... instead of a division of property’ in section 4 – indeed, they also appear in section 3. And, I record that I asked counsel for authority for the proposition that sale can be refused for “good reason” in a case where physical partition is not practicable. No such authority was produced, and I certainly have not been able to find any myself; indeed, the cases point against any such proposition being good law.”

[78] This dictum was affirmed by Girvan J in *Glass v McManus* [1996] NI 41 and in *Ulster Bank v Carter* [1999] NI 93 and, again, by Campbell J in *Frazer Homes Ltd v Frazer Houses (NI) Ltd* [1998] NI 214. Therefore, in this jurisdiction there is a wealth of authority for the proposition that the wording and construction of the 1868 Partition Act indicates that partition and sale are alternatives and the court’s discretion is limited to choosing between them. This view has further been adopted and endorsed by Wallace, “Mortgages and Charges” *Third Annual Review of Property Law* (1996) 7, 22 when he stated: “The purpose of the Partition Acts was to give the court jurisdiction to order a sale in lieu of partition; not a discretion to refuse both remedies. The balance of authority suggests that prior to the 1868 Act partition was available to a co-owner *as of right*. If this suggestion is correct, the only effect of the Act is to enable courts to order sale *instead of* partition in appropriate circumstances, not to deny both.”

[79] The only reported authority in Northern Ireland taking a contrary view is *Northern Bank Ltd v Adams* (1 February 1986 unreported) High Court (NI) when Master Ellison held that the court had a discretion to refuse to order sale and partition on the basis that the court was exercising an equitable jurisdiction and, secondly, on the basis that he considered a more liberal interpretation of the Partition Acts was being recognised by legislative changes including the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (now the Family Homes and Domestic Violence) (Northern Ireland) Order 1998) and the Insolvency (Northern Ireland) Order 1989 by virtue of Article 309. It was, therefore, his view that the Partition Acts could now be construed to give the court a power to refuse both sale and partition. Further support for this proposition and construction of the Partition Acts is found in *Clarke v Clarke* [1974] 48 DLR (3)(d) 707, in which Allen J referring to the Partition Act 1868 and placed emphasis on the wording and construction of sections 3-5 being “*may if it thinks fit*” in section 3 and “*unless it sees good reason to the contrary*” in section 4. He opines at 711 that “in my view, the italicised phraseology found in these sections clearly indicates that the court has some discretion with regard to the granting of the remedy

of sale in lieu of partition. The proposition that because partition is a matter of right, sale must be ordered when physical division is impracticable, is not one which I am prepared to accept.” Relying on *Clarke v Clarke* Conway in Co-ownership of land: Partition actions and remedies at paragraph 7.17 states that:

“Strictly speaking, the court has a discretion to refuse to order sale under sections 3-5 even where partition is impracticable.”

[80] I consider that the construction of the Partition Act as set out by Murray J and endorsed by Girvan J, Campbell J and Professor Wallace is correct. Master Ellison’s view that partition is discretionary because it is an equitable remedy fails to take into account the history and nature of the equitable jurisdiction to partition. Unlike other equitable remedies the court of Chancery granted partition as of right by analogy to the practice at common law. The Partition Acts only modified this jurisdiction to the extent that the court could substitute sale for partition. Accordingly, I am satisfied that the words “may if it thinks fit” in section 3 and “unless it sees good reason to the contrary” in section 4 only refer to the court having a discretion to refuse sale. I therefore find that the Partition Act cannot be construed to give the court power to refuse both sale and partition.

[81] One consequence of this interpretation of the statute is to cause potential injustice to a co-owner. I consider that this is why the legislature implemented Article 49 of the Property (Northern Ireland) Order 1997. It provides as follows:

“49. Without prejudice to Article 309 of the [1989 NI 19] Insolvency (Northern Ireland) Order 1989, where on the request under the Partition Acts of a party interested (or a person treated as such under Article 48) a court makes an order for partition or sale, the court, on making the order or at any time before its enforcement, may also –

- (a) impose such stay or suspension; or
- (b) impose such conditions,

as, in the circumstances of the case, it thinks fit; and it may revoke or vary any such stay, suspension or conditions.”

[82] This article permits the court to postpone an order for partition or sale or attach conditions to any such order. In so doing the article operates to reduce potential injustice caused by an immediate order for sale. I consider that this article was implemented to address the potential injustice caused by the Partition Acts. The implementation of Article 49 was only necessary, I consider, because the correct interpretation of section 3 and 4 of the Partition Acts is that the court cannot refuse to order both sale and partition. If the court had a discretion to refuse to order both sale

and partition under sections 3 and 4 of the Partition Acts, I consider the implementation of article 49 would have been unnecessary.

[83] Whilst there is limited jurisprudence in respect of article 49, I consider that it was introduced to give statutory flexibility in partition actions and can be utilised to achieve a just and equitable result especially where an order for partition or an order for immediate sale would operate harshly, unjustly, or prejudicially to one party.

[84] In exercising its powers under article 49 the court should make an order which is just and fair to all the parties. To achieve this it should take into account all the circumstances of the case, which, non-exhaustively includes consideration of the motivation of the parties; the nature of the interest of each party and the number of parties; the nature of the property; whether the property can be partitioned practicably; the extent of the equity in the property; the impact of delaying sale on the equity; the health needs of each party and the impact the order will have on their health and mental well-being; the disability of any party; each party's housing needs and availability of suitable alternative accommodation; the financial position of each party now and in the future; the nature of the relationship between the parties and whether there is a need in all the circumstances for a clean break or whether orders can be put in place to deal with the incidents of co-ownership including who can reside in the property, who is responsible for maintenance, payments of mortgage etc., the conduct of the parties, the state of the property market and the impact of any order on interested third parties including the mortgagee.

Conclusions

[85] Under section 4 of the Partition Acts, as Brent Larmour owns half of the property, the court must order sale "unless it sees good reason to the contrary." The appellant has submitted that there is good reason to the contrary on the basis that she is suffering from dementia and the move from her primary residence would adversely affect her functioning independence and cause her distress and upset. She further submits that there is no suitable alternative accommodation for her to reside at and in all the circumstances she has shown good reason why the court should not order a sale of the property.

[86] I am not satisfied that the high hurdle of establishing "good reason to the contrary" has been met in this case. Whilst there are reasons why an immediate order for sale of the property is not desirable, not least because it would adversely affect Joan Larmour's mental health and her ability to live independently, I nonetheless consider that these reasons do not amount to "good reason to the contrary" as all of the concerns raised by Ms Larmour can be adequately addressed by the powers afforded to the court under article 49 of the Property (Northern Ireland) Order 1997. Article 49 affords a wide discretion to the court when making an order for partition or sale to stay, suspend or impose such conditions on that order as in the circumstances of the case "it thinks fit." Accordingly, I find the high hurdle of showing "good reason to the contrary" has not been met in this case as the court can ameliorate the effects of

an immediate order for sale by imposing conditions to address the concerns raised. Whilst several recent cases have suggested that “good reason to the contrary” is not as restrictive as it has been in the past and the courts have been willing to consider a wider range of factors as amounting to “good reason to the contrary” it is my view that the wide discretionary powers afforded to the court under article 49 mean that “good reason to the contrary” remains a very high hurdle. In this case that hurdle may have been surmounted save for the fact I find the purported “good reasons to the contrary” can be addressed adequately by imposing conditions on an order for sale in accordance with the powers afforded to the court by article 49.

[87] Further, I consider that partition is not reasonably practicable in the present case. The premises consist of a terrace house with one kitchen and one bathroom and one set of stairs. The parties also agreed that partition was not practicable. Given my view that the courts must order either sale or partition and as no “good reason to the contrary” has been made out I accordingly order sale of the property.

[88] Given the factual findings the court has made, however, I consider an immediate order for sale would cause unnecessary injustice and prejudice to the appellant. To temper the injustice caused and to achieve a just result I intend to exercise the powers given to the court by Article 49. In exercising the powers under article 49 I take into account the factual findings I have made about the property and the interests of the two co-owners.

[89] In light of the factual findings I have made I consider that the orders of DJ Collins, which required immediate order for sale, should be quashed and the following order substituted:

- (i) The property situate at 14 Invernook Drive, Belfast, BT4 1RW, is owned in equal shares by the applicant/respondent, Brent Larmour, and the defendant/appellant, Joan Larmour, as joint tenants of the said property.
- (ii) The said property is to be placed on the market for sale.
- (iii) The sale of the property is stayed until such time as Joan Larmour is assessed by a suitably qualified medical practitioner as being unable to reside safely at 14 Invernook Drive on her own with the benefit of a comprehensive domiciliary care package, such assessment to be in written report form.
- (iv) In the event that paragraph (iii) is satisfied, Ms Joan Larmour is permitted to remain in the property until suitable alternative accommodation is provided to her.
- (v) Pending sale of the property the following conditions apply:
 - (a) Monthly interest only mortgage payments are to be paid by the Controller acting on behalf of Joan Larmour.

- (b) Joan Larmour is liable for carrying out and paying all day to day maintenance. In the event the controller considers any major works of repair or structural works are required the controller is to obtain two quotations and provide these to Brent Larmour. The works are to be arranged by the controller and Brent Larmour is liable to pay half the costs of the cheaper quotation.
- (c) Joan Larmour is entitled to reside exclusively at the property pending sale and Brent Larmour is not entitled to enter the property at any time without the consent of the controller such consent to be in writing and/or by court order.
- (d) Upon sale of the property the net proceeds of sale are to be divided equally between the parties save that any loan to be repaid to the Department is to be deducted from Joan Larmour's share of the equity.

[90] Although Brent Larmour strongly submitted that the order for sale should not be adjourned beyond the mortgage term, namely 2027, in light of the evidence of Dr English, I nonetheless consider that it is impossible to set a timeframe within which Ms Larmour's condition will deteriorate to the extent that she can no longer live in the property. For this reason, I have not placed a long stop date on the order.

[91] Further, for the reasons outlined earlier in this judgment I consider it is important that the controller and/or the social workers involved with Joan Larmour consider the need to obtain a court order to exclude Brent Larmour and the property and the street in which the property is located to stop further harassment of Joan Larmour by him.

[92] I will hear the parties in respect of costs.

Post Script

[93] After delivery of the judgment the parties were asked to provide details of any factual inaccuracies or typographical errors to the court before the judgment would be made publicly available.

[94] In response Mr Larmour indicated that he wished to obtain legal representation as he wanted the court to remove the conclusions the court had reached about his conduct towards his mother and in respect of the litigation on the basis that these damaged his reputation and were of a defamatory nature.

[95] Mr Larmour obtained legal representation. At the adjourned hearing Mr D Thompson of counsel on behalf of Mr Larmour abandoned the claim to excise the comments the court made regarding Mr Larmour. He did however seek an anonymity order and costs against Mrs Larmour.

[96] After hearing submissions by all parties the court declined the application for anonymity on the basis that open justice should prevail having regard to all the circumstances of the case. I set out specific reasons for my decision on an extempore basis indicating that if required I would give more fulsome reasons in writing.

[97] I am grateful to all counsel for their submissions in respect of typographical errors and some factual corrections which I have now incorporated into my judgment.

[98] I also heard submissions from all counsel in respect of costs. I direct that costs above and below be borne by the parties in equal shares and such costs are to be paid from the proceeds of sale of the property which is the usual order in partition suits.