

THE HIGH COURT

[2022] IEHC 295

[Record No. 2016/8728 P]

BETWEEN

PATRICK MURRAY AND PHIL ANNE FITZGERALD

PLAINTIFFS

AND

NOEL MURRAY, ANGELINE MURRAY AND ALLIED IRISH BANKS PLC

DEFENDANTS

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JUDGMENT of Mr. Justice Barr delivered on 11th day of May, 2022.

Introduction.

1. This judgment concerns two sets of proceedings that are interrelated. In the first action, being the action entitled *Patrick Murray and Phil Anne Fitzgerald v. Noel Murray, Angeline Murray and Allied Irish Banks plc* (Record No. 2016/8728 P) (hereinafter "the maintenance action"), the plaintiffs are the personal representatives of the estate of one Philomena Murray, who died on 30th September, 2016. In this action, the plaintiffs are seeking judgment against the first defendant for his failure to provide maintenance and support for his mother, Philomena Murray, during her lifetime, which was a condition upon which certain lands comprised in folios 18371, 8582 and 10346 of the register of freeholders, Co. Clare, were transferred to him by his father by Transfer dated 2nd July, 1991. The plaintiffs obtained judgment in default of appearance against the first and second defendants on 11th February, 2019.
2. The plaintiffs also seek a declaration that the burdens which were registered on the folios in respect of the right of support and maintenance enjoyed by Philomena Murray during her lifetime and/or the monetary and capital value thereof, rank superior and prior to a judgment mortgage registered in favour of the third defendant against the interests of the first defendant in the said folios, which said judgment was obtained by the third defendant on 24th June, 2014, in the sum of €1,123,901.21, together with €384 for costs, which was registered as a judgment mortgage on the folios on 16th September, 2015.
3. In the second action, being the proceedings entitled *Allied Irish Banks plc v. Noel Murray and Angeline Murray* (Record No. 2015/7471 P) (hereinafter "the section 74 proceedings"), the plaintiff seeks a declaration that the conveyance by the first defendant to his ex-wife, the second defendant, of the lands comprised in folios 8582, 10346 and 18371, Co. Clare, on 29th December, 2011, pursuant to a purported separation agreement between the defendants dated 22nd December, 2011, is void as a fraudulent

conveyance contrary to section 74(3) of the Land and Conveyancing Law Reform Act 2009 (hereinafter "the 2009 Act").

4. In order to properly understand the issues that arise between the parties in the two actions, it is necessary to set out the background to the two sets of proceedings, in some detail.

Background.

5. By a Transfer dated 2nd July, 1991, Cornelius Murray, the registered owner of the lands comprised in the three folios, in consideration of natural love and affection for his son, Noel Murray, as beneficial owner of the lands, transferred all the property described in the three folios to Noel Murray in fee simple, subject to and charged with the following rights for Cornelius Murray and for Philomena Murray: the right to be supported and maintained on and out of the said lands in a manner suitable to their ages, health and position in life and the right to be provided with transport whenever reasonably required.
6. On 11th December, 1991, those rights were registered as burdens on the three folios. It appears that Cornelius Murray died in 1998. As already noted, Philomena Murray died on 30th September, 2016.
7. The evidence was that Noel Murray had been living abroad. He returned to Ireland in or about the year 2000. It appears that he was primarily working as a farmer, but he also became involved with his brother in a company in which they were both directors. That company was engaged in the business of building houses. The company was known as Ballyonan Developments Ltd.
8. On 15th June, 2007, Noel Murray executed a guarantee in respect of the indebtedness of the company with Allied Irish Banks plc (hereinafter "the bank"). He also had certain personal borrowings with the bank.
9. In October 2010, Noel Murray received a number of letters of demand from the bank seeking repayment of various loans and other facilities that he had with the bank. He received three letters dated 12th October, 2010 calling on him to repay various amounts owed by him on foot of an overdraft facility and a loan facility. Another of the letters related to monies owed by the company to the bank on foot of various overdrafts and loan facilities. On 28th October, 2010, the plaintiff received a fourth letter from the bank demanding repayment of the sum of €646,380.07 on foot of the terms of the guarantee that he had given in respect of the indebtedness of the company.
10. On 25th January, 2011 the bank issued a summary summons against Noel Murray and his brother, John Murray. In that summons the bank sought judgment against Noel Murray in the sum of €1,113,970.72. That summons was served personally on Noel Murray on 7th February, 2011.
11. On 4th April, 2011, Noel Murray transferred ownership of each of the three folios into the joint names of Noel Murray and Angeline Murray.

12. In or about June 2011, a proposal was furnished to the bank in respect of the sums that had been claimed against Noel Murray and John Murray in the summary summons. While that proposal was signed by John Murray, it referred to the proposal being made on behalf of both of them, as it referred throughout the document to the proposal being made in the first person plural and it also made extensive reference to assets that were owned solely by Noel Murray. That proposal was undated. However, the proposal was rejected by the bank by letter dated 4th July, 2011.
13. On 22nd December, 2011, Noel Murray entered into a separation agreement with Angeline Murray. It is appropriate for the court to refer to some of the terms of that agreement, due to the fact that it was referred to in the course of evidence by both Noel Murray and Angeline Murray. The agreement provided that the family home of the parties was situated at St. Senan's, West End, Kilkee, Co. Clare. It was agreed that Angeline Murray and their two daughters would reside in the family home. The agreement provided for joint custody of the two children. It provided that Noel Murray was to pay €30 per week for the maintenance and support of the children. The agreement further provided that Noel Murray would transfer to Angeline Murray the beneficial ownership of all his estate and interest in the three folios. The agreement provided that following the assurance of the lands to her, they would vest solely in Angeline Murray.
14. On 29th December, 2011, Noel Murray's interest in the three folios was transferred to Angeline Murray. She has since been registered as full owner of the three folios.
15. The bank was not able to obtain judgment in the office on foot of the summary summons that it had issued on 25th January, 2011, due to the fact that there was a very slight discrepancy between the sums claimed in the letters of demand and the sums claimed in the summons. For that reason, the bank issued fresh proceedings in 2013, bearing record number 2013/2296 S. On 24th June, 2014, the bank obtained judgment in the Central Office of the High Court against Noel Murray in the sum of €1,123,901.21, together with €384 for costs. On 16th September, 2015, the bank registered that judgment as a mortgage against Noel Murray's interest in the lands and premises comprised in the three folios.
16. On the same date, the bank issued proceedings against Noel Murray and Angeline Murray (the section 74 proceedings), seeking an order pursuant to s. 74 of the 2009 Act, declaring void the transfer from Noel Murray to Angeline Murray of his interests in the three folios, on the basis that these constituted fraudulent conveyances, that were designed to defeat or delay the just claims of the bank as a creditor of Noel Murray.
17. On 27th September, 2016, approximately three days prior to her death, a plenary summons was issued by Philomena Murray against Noel Murray and Angeline Murray (the maintenance action), seeking an order requiring the defendants or either or both of them to support, maintain and provide transport to the plaintiff for the rest of her life in accordance with the Transfer dated 2nd July, 1991; together with an order that the defendants or either or both of them pay to the plaintiff the monetary and/or capital value of the plaintiff's right to maintenance support and transport; it also claimed damages;

interest and costs. Subsequently, by order dated 9th July, 2018, Patrick Murray and Phil Anne Fitzgerald, the personal representatives of Philomena Murray, were substituted as plaintiffs in the action.

18. By order dated 10th February, 2020, the bank was joined as a defendant to the maintenance action. On 28th June, 2021, conditional Terms of Settlement were received by the High Court which would have disposed of all of the disputes in the two actions. However, when the terms of that settlement were not carried out by the parties in accordance with the terms of the agreement, an order was made by the High Court reinstating the two sets of proceedings.

The Evidence.

19. In the maintenance action, evidence was given by Phil Anne Fitzgerald. She stated that, contrary to what had been set out in the terms of the Transfer, Noel Murray and Angeline Murray had not supported Philomena Murray during her lifetime. Ms. Fitzgerald stated that Philomena Murray had been a very independent and proud woman. She had lived in her family home until a number of days before her death. While she was physically disabled towards the end of her life, her mental faculties had remained intact until the end of her life.
20. Ms. Fitzgerald stated that she and other children of Philomena Murray had taken on the burden of supporting and maintaining her and generally looking after her needs, when Noel Murray had failed to support and maintain his mother. She stated that proceedings have been commenced by Philomena Murray in respect of the failure by Noel Murray to support and maintain her and provide transport for her during her lifetime, which had been a condition on which the transfer had been made in 1991. Ms. Fitzgerald stated that she and Patrick Murray, as the personal representatives of Philomena Murray, had continued the action so as to recoup for the estate the monetary value of the support and maintenance that ought to have been given by Noel Murray to his mother during her lifetime.
21. She stated that the proceedings had been brought against Angeline Murray, as she had become the beneficial owner of the three folios by virtue of the transfer to her by Noel Murray in April and December 2011. She stated that the bank had been joined as a defendant to the proceedings on its own application. Her case was that the entitlement of the estate to the monetary value of the support and maintenance which ought to have been provided by Noel Murray and which was in fact provided by his remaining siblings, ranked in priority to the judgment mortgage that had been registered by the bank against Noel Murray's interest in the folios.
22. In terms of the value of the support and maintenance that had been provided by the plaintiffs and other children of the deceased, she thought that the value had been put on that of approximately €460,000. She stated that while her mother had been in good mental health, her physical health had declined in later years. She had required the use of a wheelchair. Ms. Fitzgerald stated that she used to attend at her mother's house on a

daily basis to carry out chores for her and to ensure that she was well. She had also brought her to various appointments from time to time.

23. In cross-examination, Noel Murray accepted that he had not provided the level of support and maintenance that could reasonably have been expected of him. He accepted that there was money due to the estate, in respect of the value of the work that had been carried out by his siblings in caring for his mother. He stated that his inability to provide adequate support and maintenance for his mother, had been due to the fact that the investments and housing developments which he had gotten involved in through the company, had gone disastrously wrong after the financial crash in 2008.
24. In her cross examination of the witness, Angeline Murray put it to her that the lands had been transferred to her as part of the separation agreement between her and her ex-husband. That agreement had been designed to secure the interests of their two children. She accepted that Ms. Fitzgerald and her siblings have been very good to their mother. However, when the three folios had been transferred to her in 2011, there was no burden on the folios.
25. In cross-examination by Mr. Kennedy SC on behalf of the bank, Ms. Fitzgerald accepted that the maintenance proceedings had been issued by Philomena Murray just days before she died. However, Ms. Fitzgerald stated that she had not been involved in the decision to institute those proceedings. She did not know of them. She stated that it was only subsequent to the death of Philomena Murray, that she and the other plaintiff had continued the proceedings as they were the executors of her estate. She agreed that in her pleadings the amount claimed by the estate was in excess of €480,000. The lands comprised in the three folios, were made up of approximately 65/70 acres, on which there was a partly built house, which was being constructed by Noel Murray on foot of a planning permission that he had obtained in the name of Philomena Murray in 2009. However, that house was not yet completed. That was the only evidence called on behalf of the plaintiffs.
26. The first defendant did not give evidence in relation to the maintenance action. The second defendant, Angeline Murray, stated in evidence that she accepted that the family had a claim in respect of the support and maintenance that ought to have been furnished to Philomena Murray. She stated that she also had a claim as the land was in her name. While she accepted that the family were entitled to something for looking after their parents, she and her children have rights as well. Their interests had to be put into the balance. This witness was not cross-examined.
27. The third defendant, the bank, did not go into evidence in the maintenance action.
28. Turning to the second set of proceedings, being the section 74 proceedings, evidence was given by Mr. Jack O'Leary Keating on behalf of the bank. He stated that he was a case manager in the loan recovery section of the bank. He was familiar with the defendants file. He had been dealing with the case for the last three years. He proved the four letters of demand that had issued on 12th and 28th October, 2010 demanding repayment of the

amounts owing by Noel Murray to the bank on foot of his personal loans and other personal facilities and on foot of the guarantee that he had entered into in respect of his company.

29. The witness gave evidence in relation to the issuance and service of the summary summons that had issued on 25th January, 2011. He also gave evidence in relation to the proposal that had been made in writing by John Murray and the rejection thereof by the bank by letter dated 4th July, 2011. He outlined how those proceedings had not proceeded to judgment, due to the fact that the bank could not obtain judgment in the office, as there had been a slight discrepancy between the sums claimed in the letters of demand and in the summons itself. For that reason, fresh proceedings had issued in 2013, on foot of which the bank had obtained judgment in the office against Noel Murray in the sum of €1,123,901.21 on 24th June, 2014. He stated that since that time four payments had been made on behalf of the defendants, amounting to a total of approximately €5000.
30. The witnesses was cross-examined by Noel Murray, who put it to him that he had been a non-executive director of the company. The witness stated that he had signed a personal guarantee in respect of the indebtedness of the company. The witness stated that insofar as some assets of the company had been sold by a receiver on behalf of the bank, the proceeds of sale of those properties have been applied to reduce the company's debt. The witness confirmed that they had obtained a judgment against Noel Murray and had registered that as a judgment mortgage against his interest in the three folios.
31. In cross-examination by the second defendant, Angeline Murray, the witness stated that certain property owned by the company in Dublin, had been sold, which had yielded the sum of €165,000 which had been used to reduce the company's debt.
32. Evidence was given by Mr. Donnachadha Murphy, the bank's solicitor, who outlined that when the proceedings had originally been before the High Court in 2018, the action had almost been settled, but that did not come to pass, due to the fact that the bank was informed that proceedings had been issued on behalf of the estate seeking a monetary claim and that the case would be made that claim ranked in priority to any judgment that the bank had registered against Noel Murray's interest in the folios. On that basis, the bank had not been able to approve the terms of settlement that have been agreed at that time.
33. Mr. Murphy outlined how both matters had been listed for hearing before the High Court sitting in Cork in 2021. This had resulted in a settlement agreement which had been received by the court. However, when the parties were unable to adhere to the terms of that agreement, the actions had been reinstated for hearing by order of the High Court. That concluded the evidence on behalf of the plaintiff in the section 74 proceedings.
34. Mr. Noel Murray gave evidence on his own behalf. He stated that he had been a farmer, but that he had got involved in property development in a company which had been set up by his brother and in which he was also a director. He outlined how they had begun by

building approximately 20 holiday homes in Kilkee, Co. Clare. That development had gone very well as prices had risen considerably from the time that the first house was completed to the time that the last house was completed. He stated that all monies were repaid to the bank and everyone had done well out of the deal.

35. Mr. Murray stated that things continued to go well with some further developments in the Kilkee and Doolan areas. Subsequent to that, the company had learnt of a development opportunity in Meath Street, Dublin 8. This had involved the company borrowing a substantial sum of money. They had constructed two retail units with four apartments and a penthouse apartment overhead. Unfortunately, the financial crash of 2008 came along and it became impossible to sell any of the units. The witness stated that rather than waiting for the market to improve, the bank pursued the company and the individual directors on foot of the loans which were outstanding. He did not think that that was prudent or reasonable conduct on the part of the bank.
36. The witness stated that at the present time, he was working the lands comprised in the folios. He was also doing some work on the house that was partly built on the lands. He stated that he resided in the house during the summer months, but not during the winter months, when he resided with his nephew in the house which had formerly belonged to his mother.
37. In cross-examination, Noel Murray accepted that his ex-wife and children were residing in the family home at St. Senans, West End, Kilkee, Co. Clare. He stated that both he and his ex-wife were contributing to the mortgage repayments due on that property. He accepted that he was currently working the farm that was comprised in the three folios, notwithstanding that those lands were in the sole name of his ex-wife. He stated that it was necessary for him to work the lands as this was the only way that he could provide an income for the maintenance of his children.
38. The witness accepted that he had transferred all but 15 acres of the lands into the sole name of his ex-wife. He had had to retain the 15 acres, due to the fact that his brother John had an interest in those lands. He stated that his ex-wife had planted some trees on the lands comprised in the three folios, from which she derived a modest income.
39. The witness denied that the initial transfer of the lands from his sole name into the joint names of himself and his ex-wife in April 2011, or the subsequent transfer of the entire interest into her sole name in December 2011, had been due to the fact that he had received letters of demand from the bank in October 2010, or that they had issued a summary summons seeking repayment of those loans in January 2011, which had been served on him on 7th February, 2011. He stated that his transfer of his interest in the lands to his ex-wife, had been done in furtherance of his obligation under the separation agreement. Furthermore, he stated that he had done it as he was anxious to keep his children in the area.
40. In her evidence to the court, Angeline Murray outlined how she had met Noel Murray in 2003. She was living in Moyross, Limerick, at that time. She was hoping to move to

another house, but that fell through. She was very disappointed about that. She stated that Noel Murray was very understanding and was kind to her. She became pregnant by him and their daughter was born in July 2006. She stated that she had been quite sick after the birth of her daughter. She had also suffered from depression.

41. Ms. Murray stated that she had had a previous relationship in which she had had two children, a boy and a girl. Her eldest daughter had initially moved with her to be with Noel Murray in Caherdavin, Limerick, as had her son. However, he moved back to Moyross shortly thereafter. Her eldest daughter took up with a young man who was troublesome. This gave rise to difficulties. She eventually moved out to be with him.
42. Ms. Murray stated that she became pregnant again in 2007 and her second daughter was born in September of that year. She got married to Noel Murray in 2008. This made her feel a little more secure. In 2009, they rented the house in Caherdavin and moved to Kilkee. She said that she found that difficult. By early 2010, she knew that things were not working out between her and Noel Murray. She told him that he would have to leave the house. She stated that things were very difficult at that time. Her solicitor advised her that she should be given an interest in the farm that Noel Murray had under the Transfer, so as to look after the interests of her children. She stated that Noel Murray transferred the farm into their joint names. Her solicitor advised that that was not enough to secure her children's future. Under the separation agreement, Noel Murray agreed to transfer his entire interest in the lands to her. That was done on 29th December, 2011.
43. Ms. Murray denied that the transfer of the farm to her was designed to put the lands beyond the reach of Noel Murray's creditors. She stated that the transfer had only taken place further to the breakup of their marriage. It was designed as a measure to secure her children's future. She stated that when the farm was made over to her, there was no burden or charge on it.
44. In cross-examination, Ms. Murray agreed that Noel Murray was working the farm, except for the area that she had planted under trees. This provided a very small income for her of approximately €4,500 per year. She stated that Noel Murray had been working on the house in respect of which planning permission had been obtained in 2009. She stated that it was only partially complete, but it was habitable during the summer months. She confirmed that Noel Murray stayed there during the summer, but resided with his nephew in his mother's old house during the winter months.
45. The witness denied that Noel Murray resided with her and the children in the property at St. Senan's, West End, Kilkee. She stated that servants or agents of the bank had harassed her at that property in an effort to effect service of documents on Noel Murray. She stated that he had not lived there since 2011, although she accepted that he would have been at the property from time to time for the purpose of visiting his children.
46. Ms. Murray confirmed that both she and Noel Murray were contributing to the repayments on the mortgage on the property in Kilkee. She accepted that she had never provided any funds towards the farm. When it was put to her that she knew that there was pressure

from the bank in relation to repayment of the loans and other debts by Noel Murray in 2011, she accepted that she knew that there was trouble in that area. She stated that she knew that there was money owed by Noel Murray to the bank. She stated that that indebtedness arose from his activities with his brother in the company. However, the farm was not involved with the company in any way. It was not charged with repayment of any debt. The farm was totally separate to the activities of the company. She accepted that the farm had been put into their joint names in April 2011, prior to the execution of the separation agreement between them on 22nd December, 2011. That concludes the summary of the evidence given in both actions.

Legal Submissions.

47. In relation to the first set of proceedings, being the maintenance action, Mr. Kennedy SC made the following submissions: firstly, he submitted that having regard to the provisions of ss. 40 and 41 of the Statute of Limitations 1957, any claim which Philomena Murray had against Noel Murray in respect of the failure on his part to provide support, maintenance and transport for her in accordance with the terms of the Transfer, was extinguished 12 years from the date on which the right of action accrued. Given that Noel Murray had never provided any adequate support and maintenance for his mother, it was submitted that that right of action had accrued in 1991 and therefore became statute barred in or about 2003.
48. Without prejudice to that submission, counsel submitted in the alternative, that any right of action that there was in relation to the failure to provide support and maintenance, was a personal right which vested in Philomena Murray, and accordingly, it was extinguished upon her death in 2016.
49. It was further submitted that, even if the plaintiff's claim against Noel Murray could be translated into a monetary claim, which fell to be assessed by the court having regard to the fact that judgment in default of appearance had been obtained by the plaintiffs against Noel Murray and Angeline Murray, it was submitted that any such damages as may be awarded under that heading, would rank behind the judgment mortgage which had been registered by the bank against Noel Murray's interest in the lands in 2015: see *Bracken v Byrne* [2005] IEHC 80, as applied in *Ryan v Bank of Ireland* [2020] IEHC 45.
50. In relation to the second action, being the section 74 proceedings, Mr. Kennedy SC submitted that the provisions of s. 74 of the 2009 Act were very clear; they captured both the situation where the court was satisfied that there was an intention on the part of the judgment debtor to enter into a fraudulent conveyance so as to defeat his or her creditors, but also included the situation where the necessary or probable result of the transfer was to defeat for delay his creditors: see *dicta* of Palles C.B. in *Re Moroney* (1887) 21 LR IR 27, as applied in *Keegan Quarries Ltd v. McGuinness* [2011] IEHC 453.
51. It was submitted that on the evidence that had been put before the court, Noel Murray was well aware that the bank was closing in on him in relation to both his personal loans and debts and also in relation to his guarantee in respect of the company's debts, at the time that he transferred the lands into the joint names of himself and his ex-wife and

then some months later, when he transferred his entire interest in the lands over to his ex-wife. It was submitted that in these circumstances, there was ample evidence to enable the court to come to the conclusion that the actions of Noel Murray in transferring his interest in the lands to Angeline Murray, constituted a fraudulent conveyance, in respect of which the court ought to grant the appropriate relief.

Conclusions.

52. At the outset, the court indicated to the parties that it would hear all the evidence in both actions, before reaching any conclusion in either of the actions. Having heard all the evidence in both cases and having had regard to the oral and written submissions put before the court, the court is satisfied that it is in a position to give its judgment in both actions.

53. In relation to the first set of proceedings, being the maintenance action, the court is satisfied that this claim is statute barred having regard to the provisions of ss. 40 and 41 of the Statute of Limitations 1957, which are in the following terms:

"40. An action in respect of a right in the nature of a lien for money's worth in or over land for a limited period not exceeding life, such as a right of support or a right of residence, not being an exclusive right of residence in or on a specified part of the land, shall not be brought after the expiration of twelve years from the date on which the right of action accrued.

41. At the expiration of the period fixed by this Act for any person to bring an action in respect of a right in the nature of a lien for money's worth in or over land for a limited period not exceeding life, such as a right of support or a right of residence, not being an exclusive right of residence in or on a specified part of the land, the said right shall be extinguished."

54. As the right of action accrued upon the creation of the Transfer in 1991, and as no support or maintenance was ever provided by Noel Murray to Philomena Murray, it follows that the right of action became statute barred at the suit of Philomena Murray in 2003. As her proceedings were not commenced until 27th September, 2016, they are out of time.

55. Even if the court is wrong in that finding, the court is satisfied that the right to support and maintenance was a personal right, which vested in Philomena Murray. As such, it became extinguished upon her death in September 2016.

56. Even if the court is wrong in that conclusion, and if damages are recoverable at the suit of the representatives of the estate of Philomena Murray, the court is satisfied that no loss has been established in evidence by the estate. While a very large figure was pleaded in the statement of claim in the maintenance action, the evidence that was given by Ms Fitzgerald at the trial, fell far short of establishing that that level of loss, or indeed any specific loss, was suffered by Philomena Murray, or her estate.

57. If the estate wished to recover the value of the support and maintenance which had been furnished to Philomena Murray during her lifetime by Noel Murray's siblings, there would

have to be concrete evidence as to the level of services that were provided to Philomena Murray during her lifetime; as well as evidence of the basis on which those services could be valued. Thus, in order for the court to make an award of damages in respect of the support and maintenance provided, there would have to be evidence put before the court as to the number of hours per week that were spent by various members of the family looking after Philomena Murray, or transporting her to various destinations. If that was done, it would then be necessary for the representatives of the estate to put before the court some basis on which those services could be valued, such as by reference to HSE rates for the provision of similar services.

58. Unfortunately, that was not done. There was only vague evidence from Ms. Fitzgerald that she had called in on her mother a number of times each day in the latter part of her life. There was no evidence as to how many times per day, nor for how long, nor for how many days per week, any such services were given by Ms. Fitzgerald to Philomena Murray. Nor was there any evidence in relation to transport services having been provided for Philomena Murray by any of her children. In these circumstances, it is neither possible, nor appropriate, for this court to pluck a figure out of the sky and award that as damages against Noel Murray for his failure to provide support and maintenance to his mother during her lifetime.

59. However that is not the end of the matter. Even if the court could award a sum for damages in respect of the support and maintenance that was supplied to Philomena Murray by the siblings of Noel Murray, the court is satisfied having regard to the decision in *Ryan v. Bank of Ireland*, that any such right to damages cannot be "tacked on" to the burden which was registered on the folio in relation to the rights of support and maintenance enjoyed by Cornelius Murray and Philomena Murray at the time when the Transfer was executed. In this regard, Pilkington J. summarised the issue that she had to address in that case in the following terms at paragraph 66:

"The issue in this case is not that the 2016 judgment sum has been obtained in respect of the rights of maintenance and support to which this plaintiff is entitled. The issue arises in the attempt by this plaintiff to seek to add or 'tack on' this monetary amount to the burden registered in favour of this plaintiff on 3rd February 2006, so as to now afford the 2016 judgment sum priority, when in reality it was obtained after the registration of the subsequent charge in favour of the defendant."

60. Pilkington J. went on to reach the following conclusions at paragraphs 68 and 69:

"68. Whatever about the difficulty in defining or pinning down a precise legal definition of a right of residence, all agree that it is a right personal (and s. 81 confirms this) to this plaintiff. I, therefore, have difficulty in understanding how any amount of money could be effectively charged with that burden, in priority to the charge registered by the Bank, in circumstances where all rights registered within this burden are personal to this plaintiff and do not survive her decease."

69. *In my view it is contrary to the express terms of the 1964 Act quoted above, to suggest that such monies can be attached to this registerable interest in the form contended for by the plaintiff. There is not, as counsel for the plaintiff sought to argue, any analogy to any type of all sums due mortgage. This is the protection of a defined interest which is personal in nature to the plaintiff. Whilst that interest binds the owners of the folio for the duration of the lifetime of this plaintiff, the right is personal to her and, therefore, the interests held pursuant to the registration of that burden do not survive her.*"

61. Thus, the court is satisfied that even if the monetary value of a claim at the suit of the estate in respect of the failure on the part of Noel Murray to provide support, maintenance and transport for his mother during her lifetime, were recoverable; it would not rank in priority to the bank's judgment, which was registered as a judgment mortgage against Noel Murray's interest in the folios in 2015.

62. Turning to the second action, being the section 74 proceedings, it will be useful to begin by setting out the provisions of s. 74(3) of the 2009 Act, as amended:

"(3) *[Subject to subsections (4), (5) and (6)], any conveyance of property made with the intention of defrauding a creditor or other person is voidable by any person thereby prejudiced.*

(4) *Subsection (3) does not—*

(a) *apply to any estate or interest in property conveyed for valuable consideration to any person in good faith not having, at the time of the conveyance, notice of the fraudulent intention...*"

63. The provisions of s. 74(3) of the 2009 Act were enacted to replace the provisions of s. 10 of the Conveyancing Act (Ireland) 1634 in a simpler form. For this reason, judgments that dealt with s. 10 of the 1634 Act remain relevant in identifying the principles applicable to applications brought pursuant to s. 74(3) of the 2009 Act. This was confirmed by Finlay Geoghegan J. in *Keegan Quarries Ltd v. McGuinness*, where the learned judge stated as follows at paras 151 and 152:

"151. The Act of 2009 repealed the Irish Statute of Fraudulent Conveyances [1634]. The leading authority on the fraudulent intention required to bring a conveyance within the scope of s. 10 of the Act of 1634 is in *Re Moroney* (1887) 21 L.R. Ir. 27, in which Palles C.B. stated at p. 61:

"Therefore to bring a conveyance within the statute, first, it must be fraudulent; secondly, the class of fraud must be an intent to delay, hinder or defraud creditors. Whether a particular conveyance be within this description may depend upon an infinite variety of circumstances and considerations. One conveyance, for instance, may be executed with the express intent and object in the mind of the party to defeat and delay his creditors, and from such an intent the law presumes the

conveyance to be fraudulent, and does not require or allow such fraud to be deduced as an inference of fact. In other cases, no such intention actually exists in the mind of the grantor, but the necessary or probable result of his denuding himself of the property included in the conveyance, for the consideration, and under the circumstances actually existing, is to defeat or delay creditors, and in such a case . . . the intent is, as a matter of law, assumed from the necessary or probable consequences of the act done; and in this case, also, the conveyance, in point of law, and without inference of fact being drawn, is fraudulent within the statute. In every case, however, no matter what its nature, before the conveyance can be avoided, fraud, whether expressly proved as a fact, or as an inference of law from other facts proved, must exist."

152. The above principles have been applied more recently by Costello P. in McQuillen v. Maguire [1996] 1 ILRM 394, 399, and Laffoy J. in The Motor Insurers Bureau of Ireland v. Stanbridge [2008] IEHC 389 and in my judgment apply to s.74(3) of the Act of 2009."

64. The judge also made it clear that section 74(3) was not confined to the defrauding of creditors, because it included the provision "or other person" and was expressed to be voidable by "any person thereby prejudiced", she held that on a proper construction of the section, it included a person from whom a potential claim was contemplated by the transferor.
65. In the earlier case of *McQuillen v. Maguire* [1996] 1 ILRM 394, Costello P., in summarising the applicable principles of law, stated as follows in relation to the third principle at p. 399:
- "(3) If the court should find that Mrs. Maguire had no beneficial interest in the property or that Mr. Maguire's interest was less than 100% then the court could set aside the agreement entered into between Mr. and Mrs. Maguire if that agreement was voidable under the Fraudulent Conveyance Act 1634 (10 Charles 1 Sess. 2, c.3). The court need not find that the agreement was motivated by actual fraud – if it can be shown that the necessary or probable result of the agreement was to defeat or delay creditors then it could be avoided (see *In Re Moroney* (1877) 21 LR IR p. 27 at p. 61)."*
66. A similar conclusion was reached by Binchy J. in *McNamara v. McCann* [2016] IEHC 443, where he held that the express intent and object in the minds of the defendants when conveying the property into the sole name of the wife of the first defendant, was to defeat any potential claim of the plaintiff. On that basis he found that the plaintiff had proved fraudulent intent on the part of the defendants in the execution of the deed of conveyance. He went on to conclude that as "the necessary or probable consequences of the act done" was to defeat, delay or hinder the plaintiff as a creditor, as a matter of law the court should infer fraud from the fact of the deed of conveyance in accordance with the principles in the decided cases.

67. Having regard to the principles of law as set down in these cases, the court is satisfied that the bank has established that the transfers of his interest in the folios in April 2011 into the joint names of Noel Murray and Angeline Murray and the subsequent transfer by Noel Murray of his entire interest in the folios into the sole name of Angeline Murray in December 2011, constituted fraudulent conveyances. The court is satisfied that at the time the initial transfer was made in April 2011, Noel Murray was well aware that the bank was closing in on him. Four letters of demand had been sent to him in October 2010. Proceedings had issued in January 2011 at the suit of the bank claiming a very substantial sum of money, from him. Those proceedings had been served personally on Noel Murray on 2nd February, 2011. The court is satisfied that the initial transfer into the joint names in April 2011, many months before the execution of the separation agreement between Noel Murray and Angeline Murray, was an effort by Noel Murray to avoid his creditors and in particular, to prevent the bank gaining access to his assets in the form of the lands comprised in the three folios.
68. The court is further satisfied that the second transfer which was effected in December 2011, whereby ownership of the three folios was vested in the sole name of Angeline Murray, was a further step in attempting to put those assets beyond the reach of the bank. Even if the court is wrong in those findings, the court is satisfied that those transfers come within the wider definition of fraudulent conveyance, as set out in the *Moroney* case and as applied in *the Keegan Quarries* case, such that the transfer can be struck down once the court is satisfied that the necessary and probable consequences of the transfer was to defeat, delay or hinder the creditors of the transferor. In such circumstances the court is entitled to infer that the transfer was fraudulent and the court so finds in this case.
69. In reaching this conclusion the court has also had regard to the fact that, notwithstanding that the lands were transferred into the sole ownership of his ex-wife, purportedly on foot of a separation agreement executed in December 2011, over 10 years later, those lands continue to be farmed by Noel Murray; he continues to carry out works to the partly built house on the lands and he continues to reside in that house during the summer months. The court is also entitled to have regard to the reality of the living arrangements between the defendants, whereby Angeline Murray continues to reside in the family home in Kilkee and continues to make a contribution towards the mortgage repayments thereon, even though that property is in the sole name of the first defendant.
70. The court has also had regard to the affidavit sworn by Noel Murray on 14th December, 2021, wherein he effectively made an open offer, whereby he offered to complete the construction of the house on the lands within a period of 16 months from that date and to put the house up for sale on the open market. He estimated that the finished house would be worth in the region of €300,000. He stated that, given that the bank had been willing to remove the judgment mortgage from folio 18371 upon receipt of the sum of €150,000 from Ms. Fitzgerald, he proposed that if the entire proceeds were given to the bank, the balance of €150,000 could be used to discharge the judgment mortgage from folio 10346.

Thus, it is clear that Noel Murray continues to exercise considerable authority over what happens to the lands comprised in the folios and the partly constructed house thereon.

71. Taking all of these circumstances into account, the court is satisfied that the transfers effected by Noel Murray of his interest in the folios in April 2011 and December 2011, constitute fraudulent conveyances within s. 74 of the 2009 Act. Accordingly, the bank is entitled to an order pursuant to s. 74 of the Land and Conveyancing Law Reform Act 2009, declaring void the transfer of the interest of the first named defendant to the second named defendant, of his interest in the lands and property comprised in folios 8582, 10346 and 18371 of the Register of Freeholders, Co Clare.
72. In their defences to these proceedings, the defendants sought a declaration by way of counterclaim, to the effect that the transfers that were effected by the first defendant of his interest in the lands to the second defendant in April 2011 and December 2011 were not void. Given the findings and conclusions of the court as outlined above, the court refuses to make the declarations sought by the defendants in their respective counterclaims.

Final Orders.

73. In relation to the proceedings bearing record number 2016/8728P, the order of the court will record as follows:
 - (a) Notwithstanding that judgment in default of appearance was obtained by the plaintiffs against the first and second defendants, the court refuses to make any award damages against them, on the basis that the plaintiffs have failed to prove that any loss was suffered by Philomena Murray, or her estate;
 - (b) the court dismisses the plaintiffs' action against the defendants and each of them as such action is statute barred having regard to the provisions of the Statute of Limitations 1957;
 - (c) the court refuses to grant the declaration sought at subparagraph (b) of the amended statement of claim.
74. In relation to the proceedings bearing record number 2015/7471 P, the order of the court will record as follows:
 - (a) The court will make an order declaring void the transfer of the interests of the first named defendant to the second named defendant of his interest in the lands and property comprised in folios 8582, 10346 and 18371, of the Register of Freeholders, Co Clare;
 - (b) the court dismisses the defendants' counterclaims against the plaintiff.
75. The parties will have two weeks from the date of delivery of this judgment within which to file brief written submissions in relation to costs.