



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 122

A321/18

NOTE BY LORD TYRE

In the cause

GEORGE DYLAN LAFFERTY,

Permanent Trustee in Sequestration of the Estate of Mariam Van Overwaele,

Pursuer

against

(FIRST) GEORGE AMIL and (SECOND) MARIAM AMIL or VAN OVERWAELE,  
also known as MARIAN VAN OVERWAELE

Defender

**Pursuer: Forsyth; Drummond Miller LLP**

**First Defender: Party**

**Second Defender: Party**

19 December 2018

**Introduction**

[1] The pursuer is the permanent trustee on the sequestrated estate of the second defender, having been appointed by the sheriff at Dumbarton on 17 February 2000. In this action he seeks (i) reduction of a disposition by the second defender in favour of the first defender of heritable subjects near Helensburgh (“the subjects”) which was granted in 2009 and registered in the Land Register in 2013; (ii) reduction of any reservation of a liferent of the subjects in favour of the second defender; (iii) interdict against both defenders from

disposing, leasing, mortgaging, burdening or otherwise dealing with the subjects; (iv) declarator that the defenders have no right, title or interest to occupy any part of the subjects; and (v) decree ordaining the defenders to remove from the subjects.

[2] The case came before me on the pursuer's motion before calling for interim interdict in terms of the third conclusion. The second defender had lodged a caveat and appeared personally to oppose the motion. The first defender also attended in person and I allowed him to address the court. Having heard submissions by counsel for the pursuer and by the defenders, I granted the motion. The defenders have now reclaimed and I have been asked to provide a note of my reasons.

### **Background to the present action**

[3] In the time since sequestration of the second defender was awarded in 2000, there has been a complicated history of litigation, some of which was narrated in the opinion of Lady Dorrian in *Van Overwaele, Petitioner* [2009] CSOH 164. Lady Dorrian recorded a history in which various courts have commented on the second defender's attempts to delay and obstruct the sequestration. More recently, the second defender raised an action in Dumbarton Sheriff Court to interdict the pursuer from carrying out his duties as permanent trustee. The action was dismissed, and on 19 November 2018 an appeal to the Sheriff Appeal Court was refused. The second defender's pleadings were described by the sheriff principal as "hopelessly irrelevant".

[4] Despite the passage of time since the award of sequestration, the pursuer remains in office. The effect of the sequestration, in terms of what was then section 32(8) of the Bankruptcy (Scotland) Act 1985, was to vest the second defender's estate in the pursuer for the benefit of her creditors. On 27 January 2000, a certified copy interlocutor of the award of

sequestration was recorded in the Register of Inhibitions and Adjudications. By virtue of section 14(2) of the 1985 Act, such recording had *inter alia* the effect of an inhibition. That effect has been renewed by a series of memoranda lodged with the registrar in accordance with section 14(4), the most recent of which was lodged on 6 June 2017, to endure for a period of three years.

[5] The pursuer avers that by disposition dated 20 August 2009 and registered in the Land Register on 11 June 2013, the second defender purported to dispoise the subjects to the first defender. The consideration was stated to be “certain good and onerous causes”. The pursuer further avers that the second defender has purportedly been granted a liferent of the subjects. It is averred that the defenders are believed to be related and that the second defender dealt with the subjects in bad faith, having regard to the subsistence of the statutory inhibition.

#### **Argument for the pursuer**

[6] On behalf of the pursuer it was submitted that a *prima facie* case had been made out. The documentary productions vouched the sequestration and the continuing subsistence of the statutory inhibition. The subjects were vested in the trustee at the time when the disposition was purportedly granted. The fact that it had been granted while the proceedings mentioned above were pending in the Outer House was a further indication that the purpose was to obstruct the sequestration. It could be assumed that the first defender was aware of the second defender’s sequestration. There was a long history of persistent attempts to interfere with the exercise by the pursuer of his duties as trustee. He was reasonably apprehensive that what had happened before would happen again, ie that one or other of the defenders would attempt to dispose of or burden the subjects. The

balance of convenience favoured granting interim interdict. There would be prejudice to the pursuer in carrying out his duties as trustee if further disposal or burdening of the property were to occur.

### **Arguments for the defenders**

[7] The first defender stated that he had bought the subjects in good faith. There was no intention to dispose of the subjects, which were the family home. The granting of interim interdict would badly affect his family and would have an adverse effect on the future conduct of the present proceedings. In any event it was unfair to grant an interim order when he had had no opportunity to arrange legal representation.

[8] The second defender stated that she had no creditors. The sequestration had been invalid. The decision of the Sheriff Appeal Court would be appealed. A great deal of money had already been paid over to the pursuer; there was no justification for realising the value of the subjects.

### **Decision**

[9] I was satisfied that the pursuer had demonstrated a *prima facie* case for interdict. The 2009 disposition had been granted at a time when the second defender must have known that, because of the sequestration and the subsisting inhibition, she was not at liberty to dispose of the subjects. Whatever may have been the first defender's state of knowledge of the legal position at that time, he must be aware of it now. The long history of attritional litigation that has continued now for more than 18 years provides at least *prima facie* evidence of a determination by the defenders to prevent the pursuer, by whatever means possible, from selling the subjects in order to realise their value for the benefit of the

creditors. I was satisfied that there were grounds for reasonable apprehension on the part of the pursuer that if interdict was not granted, then one or other of the defenders might attempt to take fresh steps, in breach of the inhibition, to dispoise or burden the subjects in order to render their realisation more difficult.

[10] I was also satisfied that the balance of convenience favoured the granting of interim interdict. Although the first defender asserted that this would have an adverse effect on his family, he provided no coherent explanation for this assertion. On the contrary he was adamant that there was no intention on the part of the defenders to sell the family home. In these circumstances I could identify no prejudice that might be occasioned to the defenders by the granting of interim interdict, whereas there would be obvious prejudice to the pursuer if steps had to be taken to set aside any further action that might be taken by the defenders to take the subjects out of his control.

[11] I did not consider it necessary to adjourn the hearing to allow the first defender to obtain legal representation. This was a motion before calling at which the first defender had no entitlement to be present. If he wished to obtain legal representation in order to attempt to obtain recall of the order, there was nothing to prevent him from doing so.