

Family Law - The Charman Case

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A recent English Court of Appeal decision may be of interest to spouses in Ireland. The Charman case, ruled by the Court of Appeal on the 24th May 2007, may make it more attractive for spouses with a high net worth to consider filing their family law proceedings in England.

John Charman is an English businessman who made his career in insurance and was ranked amongst the top ten richest people in the City of London. In August 2006, in the biggest divorce payment in British history, the High Court ruled that a fair settlement would involve Charman giving his wife around 37% of his assets. He was ordered to transfer assets to the value of £8 million already under his wife's control, as well as an additional once off lump sum of £40 million. The couple were married for 28 years.

Charman appealed the ruling, contending that the High Court judge was wrong to award his wife such a large lump sum and he submitted that the methodology used by the judge to arrive at the figure was flawed. He argued that the judge should not have taken into account a family trust fund and should not have used a 50/50 split as the starting point to assess who should receive what. He said it should have decided how much Mrs. Charman would get on the basis of her needs.

The Court of Appeal upheld the High Court decision and provided clarity in a number of areas connected with the distribution of assets on divorce:

- Where possible property should be shared in equal proportions.

- If the needs of one spouse are greater, then assets should be distributed in accordance with that need. However, if the spouses' financial and other needs can be met by sharing, then assets should be divided equally, except where there is a good reason to depart from this principle.
- Subject to these needs and other factors, the principle that property should be shared applies equally to all property. However, with non matrimonial property there are likely to be more reasons to depart from the principle of equality.
- A 'special contribution' made by either party to the marriage may be taken into account in the distribution of the assets and can be a good reason to depart from equality. In the Charman case the court found that while both parties had played a full part in the marriage, wealth of extraordinary proportions had been made from Mr. Charman's outstanding talent and energy which was a good reason to depart from a 50/50 split.
- Special contributions may be financial and non financial and are not simply based on the level of wealth created. They are also not limited to contributions directed at the welfare of the family.
- Where debts cannot be quantified at the date of the hearing it is appropriate for them to be shared in accordance with the proportion of sharing of the assets.
- Dependant upon the facts, trust assets are an entirely appropriate category of resources to be brought into account.

While this case involved enormous wealth and the principles enunciated are thought to apply to longer, rather than shorter, marriages, it is still important from the Irish perspective. Since 2001, when Ireland signed the Brussels II Convention, it has been possible to 'forum shop' and file for divorce in most EU member states under certain conditions, including if one of the parties has been "habitually resident" in that state.

Therefore if you are a wealthy Irish spouse you may consider issuing proceedings in England. If you are in a position to meet the six-month residency test, a more favourable deal may be available. The English courts have always had a reputation as protectors of the homemaker and are traditionally more generous to a dependant spouse. In Ireland, while the homemaker is entitled to a significant proportion of the assets, there is as of yet no principle that assets should be shared and half of the assets have never been awarded by the court to the homemaker. After the ruling top family law judges in England were calling London 'the divorce capital of the world' because wives were now being favoured in big money break ups.

For those spouses with less ample resources and not in a position to meet the test of habitual residence, it should be remembered that Irish judges often look to English case law when handing down judgements and the Charman case would have 'persuasive authority'. Equality of division could therefore be the yardstick used in the Irish courts in the not too distant future.

The Charities Bill 2007

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The purpose of the Bill is to reform the law relating to charities in order to ensure greater accountability and to protect against the abuse of charitable status.

According to the Bill, charitable status will be dependent on an organisation having charitable purposes only and being for the public benefit, rather than having any particular legal form. "Charitable purposes" are to be fully defined for the purposes of the law for the first time in primary Irish legislation. A purpose is regarded as charitable if its aim is:

1. the prevention or relief of poverty;
2. the advancement of education;
3. the advancement of religion; and
4. any other purpose that is of benefit to the community.

A purpose that benefits the community includes:

- The advancement of community welfare;
- The advancement of civic responsibility or voluntary work;
- The promotion of health;
- The promotion of religious or racial harmony;
- The protection of the natural environment;
- The advancement of the arts, culture, heritage or sciences.

The purposes broadly reflect those used by the Revenue Commissioners in determining eligibility for certain tax exemptions and relief for charities.

A purpose will only be defined as charitable if it satisfies the public benefit requirement outlined above. However, a gift for the purpose of the advancement of religion will automatically be considered of public benefit. The existing law relating to the determination of eligibility for exemption from tax by the Revenue Commissioners will not be affected by the enactment of the Bill.

The Charities Regulatory Authority

Arising from the Bill, a new independent body called the Charities Regulatory Authority will also be established. The functions of the Authority will include the following criteria; increasing public confidence in the charities

sector; promoting compliance by charities of their legal obligations; encouraging better administration of charitable trusts; and establishing and maintaining a Register of Charities that will be accessible to the general public.

A number of bodies will be excluded from being charitable organisations including political parties, trade unions or employers' representatives, unlawful organisations and sporting bodies.

All charities operating or carrying on activities in the State will be required to register within 6 months of the establishment of the Charity Regulatory Authority. It will be an offence for a charitable organisation to fund-raise or accept gifts unless it is registered with the Authority. A charitable body that is convicted of an offence cannot apply for re-registration as a charitable organisation for one year.

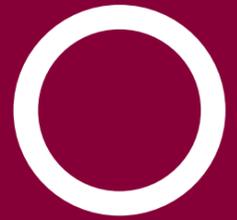
The Authority will have the power to apply to the High Court to remove a body from the register if it is of the opinion that it has ceased to be a charitable organisation. It may also apply where an organisation has become an excluded body by virtue of its promoting purposes that are unlawful, contrary to public morality or for the benefit of an organisation, membership of which is unlawful.

After registration, a charitable organisation may describe itself as a charity, charitable body, a registered charity or a charity registered in Ireland.

Any charitable organisation that is not a company will be required to keep proper books of accounts. Charities that are registered as companies will continue to abide by the Companies Acts in respect of the keeping of proper books of account.

All charitable organisations (including companies) will be required to submit an annual report to the Authority. The annual statement of accounts will have to be attached to the report. Failure to furnish the report and accounts will constitute an offence. The annual reports from each charitable organisation will be available for public inspection.

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The Personal Injuries Assessment Board (Amendment) Act 2007

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The above legislation came into force on the 11th of July 2007 after a somewhat rushed passage through the Dail amidst opposition from Fine Gael and various statutory bodies. The purpose of the legislation is to bring greater finality to the Personal Injuries Assessment Board (PIAB) awards.

Prior to implementation of the Act, if a claimant rejected a PIAB award they could still authorise and issue civil proceedings. If those civil proceedings resulted in a Court Order making an award of compensation that was less than the PIAB award, a claimant was still entitled to have his/her costs paid by the other side. According to PIAB, this lead to a practice whereby awards were being rejected simply for the purpose of obtaining legal costs.

The new legislation (subject to interpretation by the courts) means that if a claimant rejects the PIAB award that was accepted by the defendant and

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The Charities Bill 2007 (Cont'd)

The Bill makes provision for the Authority to carry out investigations into the affairs of charitable organisations. Whistle blowing by employees of charities and complainants will be protected where they have reported, in good faith, breaches in the conduct of or state of affairs of a charity.

Charity Appeals Tribunal

The Bill provides for the establishment of a Charity Appeals Tribunal to hear appeals against the decision or determinations of the Regulatory Authority. Its purpose is to provide an alternative to the courts system, by allowing persons or charitable organisations to bring an appeal in a non-judicial setting. This Tribunal will be independent in the performance of its functions.

It is intended that the Tribunal shall have five members, two of whom shall be senior lawyers and two of whom will be person with experience in areas of expertise relating to charities.

Fund-raising

The Street and House-to-House Collections Act 1962 will be amended to account of the developments in fund-raising methods since that Act was introduced. In particular there have been two main developments:-

- the sale of items as part of the cash collection process; and
- the introduction of non-cash collections

whereby the public is asked to pledge ongoing contributions via direct debit mandates, standing orders, etc.

The existing definition of collection is being amended to bring the sale of any badge, emblem or other token within the scope of the Act. The definition of money is also being extended to include money other than coins and notes to include money paid by electronic transfer (including direct debit and standing order), cheques and other negotiable instruments. Non-cash collections are being defined for the first time and provision is being made for a separate permit regime in respect of them. The new regime will require such collectors to obtain a permit for a 12 month period from the relevant Chief Superintendent of the Garda Siochana and to specify the dates proposed for the non-cash collection.

The Garda Siochana will have powers to seize money and the collection box from a collector in certain defined circumstances. The Garda Siochana will have similar powers in respect of non-cash collections.

It is proposed that a collection box will also bear the charity's registered number and be sealed in such a manner that will prevent access to its contents without the seal being broken. In addition, each collector will be obliged to deliver the collection box unopened with its seal intact to the permit holder or a person authorised by the permit holder.

Brick by Brick – What it Means to Work for a Property Developer

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In July myself and a team of 15 fellow trainee solicitors led by law school lecturer Jane Moffatt travelled with the international charity Habitat for Humanity to the village of Nkwazi, in the Northern Copperbelt region of Zambia. As volunteers we would assist by providing manual labour on one of their Global Village housing projects.

Each member of the team contributed €3000 to the project, which in my case was raised by pressuring family and friends. A total of €54,000 was raised by all the volunteers some of it by commercial sponsorship.

Habitat for Humanity is a worldwide non-profit making housing charity whose ethos is to turn hope into homes. They work in partnership with families who need to build simple, decent and affordable homes. Each prospective homeowner works side by side with the volunteers contributing a number of hours of 'sweat equity' towards their home. This manual labour coupled with donations of land, money and professional expertise ensure house prices are kept to a minimum. Once the houses are built they are sold to the partner families through a not for profit mortgage paid into a revolving fund and this money is used to build future

Brick by Brick – What it Means to Work for a Property Developer (Cont'd)

houses. The aim is to nurture a sense of responsibility and pride of ownership.

Despite months of preparation none of us really knew what to expect when we arrived. The welcome we received was overwhelming as a multitude of children ran to greet us. A choir of local women, singing and dancing, led our bus into the village. Next morning we rose at sunrise and by 7.30am we were on the building site. Prior to work beginning 'devotions' were held in a straw hut where the infectious music of the local choirs was a sure fire way to wake you up.

As bricks are so expensive to buy, our first task was to make them. Each house requires a total of 3,500 bricks and our aim was to complete 2 houses within a ten-day period. The men in our team were given the task of digging out anthills, where the sand for bricks is found. The women worked side-by-side with the village women making the bricks using somewhat antiquated manually operated equipment.

By the middle of day two the bricks had dried out and building commenced. A small team of local builders moved in to lay the foundations and we joined in. No lessons were given to us but if you made a mistake, the foreman had a firm word for you. Soon however we settled right in and before long words such as 'plum line' and 'spirit level' rolled off our tongues. It was tough work as cement is still mixed by hand with small trowels and shovels.

Soon two houses were under construction. Both our team and the villagers productivity increased dramatically when the prospect of building a third house seemed possible and which later became a reality.

The accommodation for our stay consisted of two previously finished houses. Cultural differences were immediately apparent and slightly reminiscent of days gone by in Ireland. Men and women were billeted in separate houses which were basic with brick walls and a tin roof. They consist of four small rooms, a small outhouse for the toilet and a shower/washing area. The houses were nevertheless warm and clean and surprisingly comfortable. We soon found out that sleeping mats and mosquito nets were indispensable.



Solicitors at work

The local children played a huge part in the enjoyment we experienced during our stay. While overly excited at the novelty of our whiter than white complexion they were exceptionally well behaved and polite. No matter what time of the day you were out and about there would be a flurry of children running to hold your hand and play games. While the houses were being roofed we were fortunate enough to be able to visit the local school. For safety purposes we were not allowed up on the scaffolding (which consisted of two planks of wood resting on two wooden supports). This visit highlighted the poverty that is experienced by many in Zambia. While the children adore school and are eager to learn, financial constraints restrict their education. An exam costs 5000 kwache - the equivalent of €1 - but sometimes the children have to defer a year of school until they or their parents can afford the cost of their end of year paper. Coupled with this, the school has set up an agricultural programme whereby food, such as fruits and vegetables, are grown on the school grounds. This is beginning to alleviate the problem of children arriving to school hungry and in turn lacking the concentration to learn. Any excess food grown is then sold at a lower cost to students' families who cannot afford the local prices.

Overall this was an extraordinary experience which enabled me to see true African life. The people we met and worked with were endearing and their sense of community and faith was mesmerising. In the midst of everyday poverty they are eternally optimistic and forever grateful. We all developed friendships that hopefully will continue and perhaps in the future our paths may cross once again.

goes on to obtain an award of compensation in subsequent civil proceedings which is less than the PIAB award, no Order for costs nor any other Order providing for the payment of costs may be made in the favour of a claimant. It is likely that the result of this new provision will be that claimants will think twice before rejecting a PIAB award due to the possibility of increased costs.

Furthermore, the legislation creates a somewhat similar system to the existing tender/lodgment procedure which is open to defendants in civil proceedings. If the PIAB award is rejected and a claimant issues civil proceedings, the amount of the PIAB award becomes akin to a tender in that if the amount awarded by the court is less than the PIAB award rejected by the claimant, the court may, at its discretion, order the claimant to pay all or a portion of the defendant's costs.

From a defence point of view, previously it would be have been an accepted approach to tender the amount of the rejected PIAB award. With this new amendment, no formal tender/lodgment in court is required as the rejected PIAB award has that same effect. In fact, the new legislation would appear not to operate if the rejected PIAB award or a greater amount is tendered or lodged.

The significance of the amendment for those defending personal injury claims is that the court does not have the power to award costs to a claimant if the amount of the PIAB award is not exceeded. It will be interesting to see how the court utilises this discretion in terms of the defendant's costs.

