

## **Sale of property in financial proceedings lambasted by wealthy spouse**

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**Family analysis: Can the courts specify who a property is to be transferred to and when they will take into account a new partner's wealth? Jody Atkinson, barrister at St John's Chambers considers the matter in the context of high net worth divorce cases.**

### **Original news**

Cuckolded husband says UK family courts 'appalling' following his divorce proceedings

*The Times, 3 September 2013: A man who was recently forced by a legal ruling to sell his £5.5m home to his former wife's new partner, the Spanish footballer Cesc Fàbregas, has criticised the UK's family courts.*

### **What is the issue?**

The divorce of Daniella Semaan (the wife) from her husband, 'millionaire property magnate' Elie Tatouk, has attracted attention primarily for non-legal reasons. After a 12-year marriage, which produced two children, the wife commenced a relationship with the well-known Spanish footballer Cesc Fàbregas, with whom she now has a child.

The judgment in the financial proceedings has not been released. However, the newspapers have reported that, despite the great wealth of the wife's current partner, the husband was ordered by Coleridge J to pay his wife a lump sum of £1.4m.

These funds were to be raised by the sale of the husband's flat in Belgravia, in which the wife continued to reside.

It had been reported that a company controlled by the wife's current partner made an offer to buy the property for £5.4m. The husband appealed the decision that this offer should be accepted, as he said the property was worth £7m. He further sought to appeal on the grounds that Coleridge J had clearly underestimated the wife's current partner's involvement (in that it appeared he was buying a house for his new partner to live in).

Again, the Court of Appeal decision remains unreported. However, it appears from newspaper reports that the husband was refused permission to appeal on both grounds. The Court of Appeal stated that even if the wife's current partner did allow her to remain in the Belgravia flat, it would still be a property owned by him and she would not be securely housed there. The husband had failed to show the facts put before Coleridge J were materially inaccurate.

The case raises some interesting questions about the court's powers to order the sale of property in financial proceedings following a divorce.

### **Under what circumstances can a court order the sale of property as part of a divorce settlement?**

The court may order the sale of a property in any financial proceedings following a divorce. The specific power to do so is found in the Matrimonial Causes Act 1973, s 24A (MCA 1973). The power of sale can be used to enforce an order that a lump sum be paid, or that a property be transferred to one spouse or the other. An order for sale does not take effect until decree absolute is pronounced.

The court may even order the sale of a property that is jointly owned by a spouse and a non-spouse third party. However, it must give the non-third spouse party the opportunity to make representations before it does so.

For parties who are less well off than the parties in this case, the family home is often the most significant asset owned by the parties. The courts frequently order that it is sold and that the proceeds are divided

equally or on some other basis between the parties. Where the parties have children, it is common for the order for sale to be deferred until the children are adults.

See also Practice Note: Property adjustment orders--general principles.

### **How will the court approach finding an appropriate value for a property?**

As part of the financial proceedings, the parties will usually agree the value of the properties that they own or a surveyor will be jointly instructed to fix a value.

In the same way, it is normal when settling these cases to agree a sale price, so that any offers above this sale price must be accepted. If the parties cannot agree a sale price, the court will fix one. Equally, if the property does not sell, either party can apply back to court to fix a lower sale price. If the reason that the property is not selling is the actions of the party residing in the property, the courts can make a possession order so that the property is vacant. Ultimately, the court will order the property be sold at auction.

### **Are there circumstances in which a party ordered to sell could refuse to sell the property to a particular buyer?**

The court has a specific power, under MCA 1973, s 24A(2)(b) to order that the property be offered to sale to a specified person or class of person. This is commonly used to give either spouse an option to purchase the property before it is marketed for sale.

While anything is possible, it is difficult to envisage circumstances where the court would order that a property not be sold to a certain person.

In the Tatouk case, one can infer that the wife's lawyers had brought evidence that the flat was worth £5.4m. Indeed, it is not uncommon for spouses in a similar position to press for a low valuation earlier in proceedings in order to appear 'poorer'. If the wife's new partner wants to buy the property for the market rate, why shouldn't he? It is commonplace for spouse's family members to do this.

### **What is the significance of the wealth of a new partner?**

In financial proceedings at all levels of wealth, parties are often surprised by the court's reluctance to take into account the wealth of a new partner. The reasoning usually advanced is the same as that given by the Court of Appeal in this case: the long-term support of the new partner, who has not committed to marriage, is not something that can be counted upon. This argument will generally be weaker where, as in this case, there is a child. Furthermore, the spouses have an entitlement to a share of each other's property and that is not necessarily diminished merely by the fact that they have formed a new relationship.

*Interviewed by Evelyn Reid.*

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