

What is an exceptional circumstance?

Paul Pavlou Barrister

Mrs A, lives in a 3 bedroom property in a small town outside London. She and her husband had bought the property in pre - boom 1987 for £ 60,000 with a £ 45,000 mortgage. The couple had 3 children, the youngest now being 5 years old. During the subsistence of their marriage, Mrs A agreed to pay all the household bills leaving Mr A to pay the mortgage of £ 400 per month. In August 1993, following an act of violence towards his wife, Mr A left the matrimonial home and moved to north London. Since the separation, Mr A has not contributed to his former home or family. Mrs A issues a petition for divorce in order to hurry an ancillary relief hearing and be finally rid of him. One morning in February 1995 Mrs A received a short letter from a solicitor's firm acting on behalf of a trustee in bankruptcy stating whether she had any objection to agreeing to the voluntary sale of her home.

Alarmed and distressed Mrs A contacts a local firm for advice. She is told that being evicted from her home, finding new accommodation, having 3 young children and possibly moving the children to other schools, disrupting their education, "are the melancholy consequences of debt and improvidence with which every civilised society has been familiar."

Mrs A unfortunately, is in the unenviable position of being employed with 3 children to raise. She works night and day earning £ 700 per month. All her money is claimed and divided before she can get her pay packet in her hand. Being unable to have green form assistance, she instructs her firm to write 2 letters on her behalf at £ 7.00 each. Her request for an adjournment of the proceedings is met by a longer letter stating that the Insolvency Act 1986, entitles the 'Licensed Insolvency Practitioner' to apply for the house to be sold so that the creditors can be paid off. Mrs A desperate and impecunious, traces her husband, who had successfully avoided service of the divorce petition, and is reliably informed by him, that he will definitely be able to pay off his creditors and that she shouldn't worry.

On 11th October 1995, Mrs A goes back to her solicitors and tells them that she had just received a letter from the Court that a hearing was going to be held in the Royal Courts of Justice in central London, where the application will be that her home should be vacated and sold forthwith. Mrs A, barely intelligible with distress, is informed after a lengthy negotiation with a legal aid officer that she could have legal aid limited to representation to oppose an application for an order of sale of her home. Mrs A is told to find out if there was any possibility of raising enough money to pay her husband's creditors off. In the meantime, she is told by her solicitors that they will get as much information as they can as regards the outstanding debt, the outstanding mortgage, and the trustee's views as regards settlement. Mrs A is told not to worry, a very good counsel would be instructed on her behalf.

Counsel is indeed very good. But unable to do the hearing. A fact, counsel's clerk informs the solicitor of, the day before the hearing.

Mrs A having chased Mr A through family and friends, wins an agreement from her husband, that he will pay her maintenance of £ 500 per month. With 2 lodgers at £ 50 per week Mrs A is told the day before the hearing, over the telephone by a loan company, that she can get a mortgage large enough to pay her husband's debts and the outstanding mortgage.

On the day another barrister introduces himself to Mrs A. The news is not good. Eighteen months having passed since the appointment of the trustee in bankruptcy, only an exceptional circumstance, she is told, would prevent her from having to leave her home. Now only an untimely word away from tears, Mrs A asks



her barrister to explain to her how a person who had physically abused her for a number of years before she had the courage to get a domestic violence injunction against him, had then been left penny less with three children to look after and support and having not heard from her husband in months, now faced being evicted because he was unable to run his own business, for his own benefit, conducted somewhere else, unbeknown to her.

Her barrister is stumped, a most unusual occurrence, believe me. Something about equity, voices being heard and the creditors having a better claim. The conference lasts 20 minutes before the trustee's counsel arrives followed closely by the solicitor for Mr. A. The Counsel for trustee wants to see documentary evidence of her ability to get a mortgage. The solicitor for the husband states he was unaware that a deal had been made for maintenance and was just told the day before by his client to arrive at court for the hearing. Mr A did not arrive.

The Registrar having waited long enough, calls the parties in. Counsel for the trustee pursues his application for sale. Mrs A's barrister resists, there has been an agreement, injustice, inequity, lack of time. The Registrar declares that a court hearing, despite the length of time since the trustee's appointment, always concentrates the mind. The learned judge orders that the property should be delivered up vacant to the trustee within 3 months. The costs to be paid by Mrs A on the basis that this hearing should not have taken place. At this moment Mr A walks into the courtroom. He sits at the back of the court. The hearing being over seconds later, Mr A and his solicitor leave the building without discussing anything to anyone.

Mrs A is now barely holding back the tears. Her barrister gives her a detailed plan of action. She should do this and this and that.... Do not worry, I ask your solicitor to do all this on your behalf, but I do fear that your legal aid certificate is very limited and they may not be able to do it for you. Mrs A leaves the building alone, with the clock ticking.

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Temple.

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