

JOINTLY OWNED HOMES

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Recently settled Revenue appeal goes to Supreme Court

By Kieron Wood

The Supreme Court is to hear a Revenue appeal about its power to sell jointly-owned homes to settle tax debts, even though the case has been settled. The Revenue said it has about 20 similar cases in the pipeline, and a number of High Court actions which raised the same issue were deferred pending the outcome of the Supreme Court appeal.

Collector-General Liam Irwin said he had a "real and material interest" in the outcome of the appeal, and the issue was not moot in the generally-accepted sense.

The appeal arises from a High Court judgment in January 2006 in proceedings against Thomas Deasy.

The Revenue had registered three judgment mortgages against his interest in a property which he co-owned with his estranged wife, Carmel. She claimed that the High Court had no jurisdiction to enforce a judgment mortgage against her share of the property. Miss Justice Mary Laffoy held that, where a judgment mortgage was registered against the interest of one owner of co-owned registered land, the only way to enforce the judgment would be either to divide the property or to sell it and divide the proceeds.

However, she said either option would interfere with the rights of the co-owner, so it would not be appropriate for

the court to make such an order.

The Revenue appealed to the Supreme Court. Giving judgment for the five-judge court earlier this month, Chief Justice John Murray said: "The power to order a sale in lieu of partition is wholly statutory and does not extend to registered land in the absence of any express jurisdiction conferred by the [Registration of Title] Act of 1964.

"This has implications of fundamental importance to the Revenue Commissioners, in the exercise of the [Collector-General's] statutory power to collect taxes."

Since the appeal was filed, Deasy has settled the three judgment mortgages, so the points of law which were raised are now moot.

"The general practice of this

court is to decline, in principle, to decide moot cases," said Murray. "In exceptional circumstances, where one or both parties has a material interest in a decision on a point of law of exceptional public importance, the court may – in the interests of the due and proper administration of justice – determine such a question.

"However, the discretion to hear an appeal where there is no longer a live controversy between the parties should be exercised with caution, and academic or hypothetical appeals should not be heard."

The Chief Justice said the issues raised in this appeal had important implications for the property rights of co-owners of registered land in a similar position to Carmel Deasy, so the court would hear the appeal next term.