



## 'Hidden Affair' - means wife not liable under mortgage

On 16 March 2010 the Court of Appeal gave judgement in a dispute between a lady in Norfolk and her mortgagee, First Plus Financial Group plc.

Unfortunately, the lady's husband was in the habit of running up debts, particularly on credit cards.

The parties married in 1991, but by 1999 the debts had to be paid off. The couple bought a new bungalow, with her mother.

By 2002 the property was re-mortgaged and further debts paid off, but by 2003 credit card debts of the husband had again substantially increased to a level where instalments could not be maintained, and her husband told her that the only way forward was to re-mortgage again.

The husband swore on their children's lives that he would pay all the future mortgage payments himself and, reluctantly, and feeling under considerable pressure, the wife agreed to the re-mortgage.

What the husband had not revealed was that before completion of the re-mortgage the husband had started an affair. Although when found out by the wife he promised to end it, he did not, and eventually left, and divorced the wife for this lady.

The husband then went bankrupt, having run up further debts. The wife was faced with a claim for possession, because she could not continue to maintain the mortgage payments.

The Court said that because the mortgage company knew that the mortgage was to repay just the husband's debts, they were at risk of having the mortgage made unenforceable against the wife, if the husband had exercised undue influence, or misrepresentation, in getting the wife to sign up to the mortgage.

The wife placed her trust and confidence in the husband, as the husband was in charge of the family finances, even though the wife participated in important decisions. This was particularly so, given the nature of the promise he made to her "on his children's lives" given that situation, the husband had an obligation to be candid and fair to the wife.

By concealing the affair, the wife (wrongly) believed that the husband was as committed to the marriage as she was, and this persuaded her to agree to the re-mortgage.

The Court held that in the absence of independent legal advice, the wife was not bound by the mortgage transaction, and her share of the equity, which she would not have put at risk had she known of the true facts, was protected from the mortgagee.

This case is to some extent facts specific, but in the writer's experience people who run up debts and have affairs at the same time, are not unknown in the context of a marriage breakdown, so this loophole may be useful for others in the future. It might well be arguable that even if the couple were not married, but had a family, and the circumstances were similar, the result might well have been the same.

**Mike Spencer**  
**Actons**  
**20 Regent Street**  
**Nottingham**  
**NG1 5BQ**

**Tel: 0115 9 100 200**

**Email: [mike.spencer@actons.co.uk](mailto:mike.spencer@actons.co.uk)**