

# BUSINESS PROFILE

## Secrets and lies

**Meryll Llewellyn-Jones**, family paralegal at Vanderpump & Sykes Solicitors, highlights a case where a husband's covert affair led to his wife keeping the house

**W**HEN a wife agrees to allow the family home to be used as security for her husband's debts, the legal situation is normally clear and the creditor can rely on her consent in order to take possession.

However, a recent case, in which a wife successfully resisted the bank's claim on the matrimonial home after she discovered that her husband had been having an affair, has shown the limitations of this principle.

The couple's home was remortgaged in 2002 when the husband wished to consolidate private credit card debt. He had promised his wife that he would behave more responsibly in future and make the repayments due. However, he had begun an affair, which his wife discovered in 2004 and which led to their divorce in 2006.

The ex-husband was made bankrupt. His ex-wife was unable to maintain the mortgage payments and the bank sought possession of the house so that it could be sold to satisfy the mortgage. She claimed that her agreement to remortgage the property had been obtained as a result of undue influence exerted by her husband and that he had misrepresented the true circumstances.

When the ex-wife's argument failed to impress the judge, she appealed to the Court of Appeal.

The Court addressed the question of whether she had the degree of trust and confidence in her husband (who managed the family finances) to give rise to an obligation on him to be candid and just in his treatment of her. The Court concluded that she did. She



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had the right to be informed of the relevant circumstances so that she could make an informed decision.

The second question was whether the husband's affair should have been disclosed, given that he was under an obligation of candour and fairness. The Court decided that it should. The wife had agreed to the remortgage on the basis that she believed that her husband was committed to the marriage, his family and the maintenance of the family home.

Furthermore, if the wife had taken independent legal advice on the wisdom of the transaction, would the knowledge that the husband who was asking for her unqualified trust was carrying on a secret affair be relevant? The Court considered it would and accepted her appeal.

**■ For further advice on any area of family law, contact our specialist Family Law Team. A fixed fee interview, that is not time restricted, can be arranged for £75 plus VAT by telephoning 020 8370 2898 or by emailing [markheselton@vanderpumps.co.uk](mailto:markheselton@vanderpumps.co.uk)**

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