Neutral Citation: [2013] IEHC 385

THE HIGH COURT

[2013 No. 75 I.A.]

BETWEEN

PETER ROGER WRIGHT-MORRIS

PLAINTIFF

AND

IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL LIQUIDATION)

DEFENDANT

Judgment of Ms. Justice Laffoy delivered on 15th day of August, 2013.

The application

1. On this application the plaintiff seeks an order pursuant to the inherent jurisdiction of the Court or, alternatively, under s. 6 of the Irish Bank Resolution Corporation Act 2013 (the Act of 2013) to allow the commencement and initiation of proceedings against the defendant.

2. The provision of the Act of 2013 on which the plaintiff relies is s. 6(2)(b) which provides that, with effect from the making of the Special Liquidation Order in respect of Irish Bank Resolution Corporation (IBRC), –

> "no further actions or proceedings can be issued against IBRC without the consent of the Court."

A similar provision, s. 222 of the Companies Act 1963 (the Act of 1963), governs the prosecution and commencement of proceedings in the case of a compulsory winding up. Section 222 provides as follows:

> "When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose."

Section 10(2)(c) of the Act of 2013 provides that s. 222 of the Act of 1963 does not apply to IBRC.

3. Although, when the application was initiated, the proceedings were given an "intended action" record number, in fact, the plaintiff is seeking leave not to initiate proceedings in this jurisdiction, but to initiate proceedings in England. At all material times the plaintiff resided in England and conducted banking business with Anglo Irish Bank Corporation plc (Anglo) at its branch in Manchester. It is not in dispute that the creditor/debtor relationship of IBRC (in Special Liquidation), as successor of Anglo, and the plaintiff is governed by and is to be construed in accordance with the laws of England. Further, under a Private Customer Services Agreement executed on 7th July, 2004, which set out the general terms of business on which each transaction entered into between the plaintiff and Anglo was governed, provided, *inter alia*, that the Courts of England and Wales should have exclusive jurisdiction to settle any dispute which might arise out of or in connection with the agreement in respect of any claim brought against Anglo. That agreement disclosed that Anglo was authorised as a banker and provider of investment services by the Central Bank of Ireland and operated in the United Kingdom through one or more branches whose conduct of business was regulated by the Financial Services Authority (FSA).

4. The application is grounded on the affidavit of the plaintiff sworn on 9th July, 2013. The response to the application is an affidavit of Kieran Wallace, one of the joint Special Liquidators appointed to IBRC (in Special Liquidation) on 7th February, 2013.

5. On the basis of the evidence before the Court, the plaintiff first indicated to IBRC that he has a claim against IBRC by letter dated 10th August, 2012 from his then solicitors, Bracewell Law, directly to IBRC in London. Subsequently, Bracewell Law ceased to act for the plaintiff and another English firm of solicitors, BPE LLP, commenced correspondence directly with the Special Liquidators on his behalf. They have also ceased to act for him. His current English solicitors are Freeth Cartwright LLP.

6. Since June 2013, an English firm of solicitors, Linklaters, have been acting for the Special Liquidators in the United Kingdom in connection with the plaintiff's claim. A. & L. Goodbody, Solicitors, are acting for the Special Liquidators on this application.

The plaintiff's claim against IBRC

7. In outlining the plaintiff's claim against IBRC, I propose doing so by reference to the correspondence which has passed between the two sides.

8. The starting point is the letter dated 10th August, 2012 from Bracewell Law directly to IBRC. At the outset, it was stated in that letter that the plaintiff's claim against IBRC relates to what is referred to as a "swap transaction", which, it was alleged, was mis-sold by Anglo to the plaintiff around July 2004. The letter of 10th August, 2012 is very comprehensive and it enclosed copies of the various documents which were the source of the plaintiff's complaints. The basis of the plaintiff's claim was stated as follows:

> "Our client has numerous issues, not only with the way that the swap transaction was sold to him and the Bank's breaches under the FSA COB Rules [Conduct of Business Rules] . . . , but also the terms of the Amended Facility, the swap transaction itself and the Bank's letter of 24th August, 2010 informing him of his purported breach of the terms of the Amended Facility."

The "Amended Facility" was a Facility Letter dated 13th July, 2004 from Anglo to the plaintiff. It varied a Facility Letter dated 14th June, 2004 from Anglo to the plaintiff, acceptance of which was endorsed on it on 7th July, 2004 by the plaintiff.

9. The issues alluded to in the passage quoted above were elaborated on comprehensively in the letter of 10th August, 2012 under the following headings: Misrepresentation; Duty of Care; Impact of the execution of the Swap transaction; COB Rules; Anti-

Competitive Procedures by the Bank; and Termination Fees. The letter concluded by alleging that the Swap transaction was mis-sold to the plaintiff, that Anglo had been in breach of the COB Rules, that the Swap Confirmation was incomplete and that there was no security attached to the Swap transaction. It was stated that the plaintiff had recently had to sell one of his properties against his wishes and that situation had come about solely due to the mis-selling of the Swap transaction and Anglo's breach of its duty of care to the plaintiff. It was stated that the plaintiff was seeking to be placed into the position he would have been in had it not been for Anglo's mis-selling of the Swap transaction. Therefore, he was seeking to recover from IBRC all losses suffered under the terms of the mis-sold Swap transaction from the date of the transaction and to obtain a cancellation of the Swap transaction. It was stated that the plaintiff was keen to resolve the matter amicably without issuing proceedings. A full and constructive response to the letter was requested.

10. Chronologically the next item of correspondence before the Court, which was exhibited in Mr. Wallace's affidavit, not in the plaintiff's affidavit, is a letter dated 23rd April, 2013 from BPE, on behalf of the plaintiff, to the Special Liquidators. Again, this was a very comprehensive letter setting out the background to the plaintiff's complaint. The letter of claim from Bracewell Law was referred to and there followed a long litany of allegations of negligent advice, breaches of statute and breaches of the COB Rules in relation to what is referred to as "the Interest Rate Collar Transaction", being the instrument previously referred to as the Swap transaction. It was stated that subsequent to the letter of 10th August, 2012 IBRC had confirmed that it intended "to deal with all complaints of this nature under the recently instituted FSA Review Scheme for mis-sold interest rate derivative products", but that the plaintiff had received no further updates. Having outlined the effect on the plaintiff's affairs, BPE made an open offer to resolve the dispute. In Linklaters' letter of 13th June, 2013 referred to later, there is reference to an e-mail dated 10th May, 2013 from Mr. Richardson, the other joint Special Liquidator, which I assume was a holding response, to the plaintiff. However, that e-mail has not been exhibited.

11. The next item of correspondence is an e-mail dated 30th May, 2013 from Freeth Cartwright, the plaintiff's current English solicitors, to the Special Liquidators. It was stated in the e-mail that there had been no substantive response to the proposal made by BPE and that Freeth Cartwright were instructed to progress the matter, either through constructive dialogue, or failing that, through the formal legal channels. Two matters on which confirmation was sought from the Special Liquidators have given rise to subsequent controversy. The first was a query whether the parties would be able to agree an appropriate "standstill agreement" to preserve the plaintiff's causes of action, pending dialogue, but the alternative course of the plaintiff issuing proceedings, with the permission of the Court under the Act of 2013, was also suggested. The second was a query whether appropriate undertakings could be agreed "so as to maintain the status quo vis-à-vis our client's assets (the Bank's security) pending the outcome of this matter", an alternative available course suggested being for the plaintiff to obtain appropriate injunctive protection.

12. The first letter from Linklaters was dated 13th June, 2013 and was to Freeth Cartwright. It was obviously intended to be a response to the letter of 23rd April, 2013 from BPE, as well as the e-mail of 30th May, 2013 from Freeth Cartwright. It was contended by Linklaters that the loan which had been advanced to the plaintiff on foot of the facility in 2004 remained repayable on demand and IRBC's rights were reserved in that regard. On this point, reference was made to Clause 16.1 of the Amended Facility Letter, which I assume was intended to be a reference to the Facility Letter dated 14th June, 2004, which required the plaintiff to make all payments under facility "without any set off, counterclaim or deduction". Reference was also made to the fact that the plaintiff had been notified of an Event of Default by letter dated 20th September, 2010. The specific points in the e-mail from Freeth Cartwright to which there is reference above were then addressed. It was stated that the necessity of a standstill agreement was not clear. The matters raised in BPE's letter allegedly giving rise to the plaintiff's claim seemed to have taken place in 2004 and it was not apparent what causes of action existed which were then "capable of preservation". As regards the request for undertakings, it was stated that the position was being considered.

13. On that last point, there was a further letter of 28th June, 2013 from Linklaters to Freeth Cartwright in which it was stated:

> "Our clients will be prepared to undertake to your client on behalf of IBRC, that IBRC will not take any steps to enforce the Security . . . without our clients . . . first giving 7 days' notice to you . . . by e-mail before IBRC takes any such steps (such undertaking to be revocable only on giving 7 days' notice in the same way)."

It was suggested that an undertaking in the foregoing terms ought to provide the plaintiff with sufficient comfort.

14. The proposed undertaking obviously did not afford sufficient comfort. By e-mail dated 7th July, 2013, Freeth Cartwright informed Linklaters that an application for permission pursuant to s. 6 of the Act of 2013 from the Irish High Court would issue against IBRC and would be served on A. & L. Goodbody within a week. In response, by letter dated 11th July, 2013, Linklaters requested Freeth Cartwright to explain –

> (a) the plaintiff's concerns as to the adequacy of the undertaking proffered;
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> (b) the need for a standstill, that is to say, that Freeth Cartwright "identify claims for which the limitation period has not yet expired but where it imminently might";
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> (c) how the plaintiff could take the position that "his alleged claims entitle him to a reduction in the sums outstanding under the loan" given Clause 16.1 of the Facility Letter;
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> (d) the basis on which the plaintiff intended to argue before this Court that he should be given leave to commence proceedings, including what the necessity is for the plaintiff to bring proceedings at this stage (or at all) in the light of the points made earlier; and
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> (e) precisely what proceedings the plaintiff intended to bring, the relief he intended to seek and the Court in which he proposed to bring the proceedings.

15. This application was initiated on 12th July, 2013 and served on A. & L. Goodbody on the same day. There was subsequent correspondence between A. & L. Goodbody and Downes, the solicitors acting for the plaintiff on this application, and also between Freeth Cartwright and Linklaters. However, I consider it appropriate to outline the basis of the plaintiff's application and the basis of the defendant's response by reference to the affidavits which have been filed.

Affidavit evidence

16. In his grounding affidavit the plaintiff referred to what had originally been described as the "swap transaction", and subsequently as the "Interest Rate Collar Transaction", dating from August 2004, which he referred to as the "Derivative Instrument". The plaintiff averred that he had been advised that the Derivative Instrument was wholly unsuitable for him and was in breach of the COB Rules. Having elaborated on those allegations, he averred that he has been advised that he has a cause of action based on, *inter alia*,

breach of duty, breach of contract and negligent misstatement. He also averred that the losses that had been caused by the defendant's actions exceed in amount the outstanding borrowing owed to the defendant.

17. The plaintiff exhibited a draft of the Claim Form which Freeth Cartwright propose to issue against IBRC (in Special Liquidation) in the Queen' Bench Division of the Royal Courts of Justice. The claim as set out in the Claim Form, in my view, is no less informative than a claim endorsed on a plenary summons issued in this Court would be, in that the reliefs claimed are set out as follows:

> (a) damages for negligence, including negligent misrepresentation and/or negligent misstatement, damages under s. 2(1) of the Misrepresentation Act 1967, and/or damages for breach of contract, and/or damages for breach of statutory duty;
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> (b) rescission of "the August 2004 derivative instrument", a "collar" and/or restitution of all payments made by the Claimant under the August 2004 Collar (including any break cost incorporated into the pricing and terms of the August 2004 Collar) to the date of judgment herein;
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> (c) interest pursuant to s. 35A of the Senior Courts Act 1981;
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> (d) costs; and
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> (e) further and other relief.

It is then stated that all of the reliefs arise "out of the Defendant's advice and/or representations, and/or absence of advice, and/or representations, and/or concealment of facts, and/or mis-selling in connection with an interest rate derivative product with a trade date of August 2004 made between the Claimant and the Defendant".

18. In his replying affidavit, Mr. Wallace exhibited a letter dated 18th July, 2013 from A. & L. Goodbody, in which it was contended that matters which had been raised on behalf of IBRC in the correspondence between the English solicitors had not been adequately responded to on behalf of the plaintiff and in which A. & L. Goodbody were seeking such response. In that letter it was stated that, unless and until the three issues outlined had been fully addressed, the Special Liquidators would have no option but to contest the plaintiff's application for leave to issue proceedings against IBRC. Mr. Wallace then outlined the following matters, which it is contended the plaintiff and his solicitors have neglected or refused to address, namely:

> (a) Under the heading "Statute of Limitations/Standstill Agreement", it was asserted by Mr. Wallace that there is a good arguable case that the plaintiff's claim is statute-barred, suggesting that the plaintiff seems to have considered that his claim might be statute-barred in seeking the agreement of the Special Liquidators to a standstill agreement to preserve his causes of action.
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> (b) Under the heading "Right of Set Off", referring to Clause 16.1 of the Facility Letter, Mr. Wallace averred that it is telling that the plaintiff and his solicitors have neglected and/or refused to set out the basis on which it is claimed that the plaintiff has a right of set off against IBRC in respect of the loan, in the light of that clause. Further he averred that, in the absence of a right of set off against IBRC, it appears that the plaintiff's claim, even if successful, would rank as an unsecured claim in the liquidation of IBRC and "at this point in time it is not expected that there would be any monies available to pay a dividend to unsecured creditors of IBRC".
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> (c) Under the heading of "Refusal of Undertakings", Mr. Wallace asserted that it is unclear as to why the plaintiff requested undertakings from the Special Liquidators, subsequently refused to engage with the Special Liquidators in relation to the form of undertakings, and instead brought this application. Further, he utterly rejected an assertion made in correspondence by Freeth Cartwright subsequent to the initiation of this application that the Special Liquidators have no desire or intention to engage in constructive dialogue with the plaintiff.

In conclusion, Mr. Wallace averred that the issues he had outlined are directly relevant to the plaintiff's application for leave to issue proceedings against IBRC. He also averred that the joint Special Liquidators should not be forced to incur the costs of defending the plaintiff's claim in England, in circumstances "where that claim may be statute-barred". Further, he averred that, in circumstances where no right of set off appears to apply, the plaintiff has failed to explain what value there is in him obtaining the leave of the Court to obtain an unsecured judgment debt against IBRC in liquidation. Finally, Mr. Wallace averred that, in circumstances where the plaintiff has neglected and refused to substantively respond to the issues they have raised, the Special Liquidators have no option but to contest the plaintiff's application. They asked the Court to refuse the reliefs sought on the application.

19. The issues raised by Mr. Wallace had already been raised in correspondence from A. & L. Goodbody to Downes. Those issues were addressed in an affidavit sworn on 24th July, 2013 by Marc Hickey, a solicitor in Downes. In that affidavit Mr. Hickey made the point, which I have made earlier, namely, that the claim as set out in the proposed Claim Form to be issued in England contains as much information as is contained in an endorsement of claim on a plenary summons issued in this Court. While acknowledging that the Claim Form does not contain the particulars or details of the main claim, it was averred that the plaintiff wishes to avoid unnecessary expense in drafting further proceedings until he has received the permission of the Court to bring the proceedings. In relation to the contention that the plaintiff's claim may be statute-barred, Mr. Hickey pointed out that the plaintiff's substantive cause of action arises under English law and is a matter which only can be determined before the English courts, suggesting, that the Special Liquidators may, if they think fit, raise the application of the Statute of Limitations as a preliminary point of substantive law before the English courts. Mr. Hickey also made a point, which was reiterated by counsel for the plaintiff at the hearing of the application, that the scope for examination and the determination of matters of law on this application is limited to the effect and application of the Act of 2013, with a view to ensuring that the essential formalities of Irish law are adhered to to enable enforcement in this jurisdiction of any judgment obtained by the plaintiff against the defendant in England in the future. As regards the request for a standstill agreement in the e-mail of 30th May, 2013, Mr. Hickey averred that the plaintiff is satisfied that no further benefit will accrue to either party by pre-litigation correspondence and that engagement has proven, and will continue to prove, fruitless. As regards the alleged non-entitlement of the plaintiff to set off, Mr. Hickey made the point that the issue is one of substantive law and involves the construction of the contract in accordance with English law and has suggested, although not in these terms, that the defendant is putting "the cart before the horse" in that the judgment has to be procured before the issue of whether the plaintiff is prevented from seeking set off can be raised. On the issue of the rejection of the undertaking proffered by Linklaters, Mr. Hickey averred that the undertaking was refused by Freeth Cartwright because it was inadequate. Finally, Mr. Hickey averred that neither Linklaters nor A. & L. Goodbody could be confused about the nature of the claim, which the plaintiff will assert in the English courts which, he asserted, was set out in the initiating letter of 10th August, 2012 from Bracewell Law.

The law

20. As I understand it, there was consensus between counsel for the plaintiff and counsel for the defendant that the Court could get guidance as to the nature of its discretion under s. 6(2)(b) of the Act of 2013 from the authorities on s. 222 of the Act of 1963, both of which are quoted, almost in juxtaposition, earlier. No Irish authority is cited in the annotation on s. 222 contained in McCann and Courtney *Companies Acts 1963 – 2012*.

21. However, s. 222 is a verbatim replication of s. 231 of the U.K. Companies Act 1948. The nature of the Court's discretion under that section was considered in a number of authorities. The authority which both sides opened on the hearing of the application was the decision of the Chancery Division of the High Court in *Re Exchange Securities and Commodities Ltd.* [1983] BCLC 186. In that case, Mervyn Davies J. applied the test which had been applied by the Court of Appeal in *Re Aro Co. Ltd.* [1980] 1 All ER 1067. In that case, Brightman L.J. stated (at p. 176):

> ". . . we consider that the discretion of the court under s 231 gives the court an equal freedom to do what is right and fair in the circumstances."

In *Exchange Securities and Commodities Ltd*., Mervyn Davies J. refused to give liberty to commence the proposed proceedings on the applications before him, stating (at p. 195):

> "My reason for this is that I must do what is right and fair in the circumstances: see the *Aro* case . . .. It seems right and fair to me, in the circumstances of this case, not to allow the action. The approach should be, I think, that leave should be refused under s. 231 if the action proposed raises issues which can conveniently be decided in the course of the winding up. It seems plain to me that the issues which would be discussed in the proposed Chancery action can perfectly well be decided in the ordinary course of the liquidation. Now that the liquidator is aware of the trust claims and, moreover, has by his counsel undertaken to put before the court in a neutral fashion the issue whether or not the various classes of investors have trust interests, it seems to me quite unnecessary to allow a separate action to decide these issues. I add that there seems to me to be a positive benefit in having the issues decided in the liquidation because the procedure should be quicker and less expensive than writ or originating summons proceedings.
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> The general approach I have mentioned gives way in special circumstances:
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> . . . compare the *Aro* case. I see no special circumstances here. The considerations urged on the plaintiffs' behalf do not, singly or taken together, seem to me to make it right or fair to allow the action."

22. Although the wording of s. 6(2)(b) of the Act of 2013 is somewhat different to the wording of s. 222 of the Act of 1963, and s. 6(2)(b) was specifically enacted as a substitute for s. 222, I consider that the Court's discretion in relation to each provision should be exercised in the same way. Accordingly, the criterion which the Court should apply is whether it is right and fair in the circumstances for the Court to give consent to the proposed proceedings. Obviously, if the issues intended to be raised can be conveniently decided in the course of the winding up, it is in everybody's interest that that is the route a claimant against IBRC should take. Significantly, in his submissions, counsel for the defendant made it clear that it is not the defendant's case that the plaintiff's claim could be dealt with in the winding up.

23. Another area of the Court's jurisdiction which it was suggested might assist the Court by analogy is the exercise by the Court of its discretion on an application to join a person as an additional defendant in proceedings, in circumstances where the person is sought to be made a defendant in an existing action at a time when he could rely on the Statute of Limitations as barring the plaintiff from bringing a fresh action against him. The current state of the jurisprudence on the point in this jurisdiction is outlined in Delany and McGrath on *Civil Procedure in the Superior Courts* (3rd Ed.) at para. 6 – 69 where it is stated:

> "So, in summary, it would appear that a court does have a discretion to refuse to join a defendant where a cause of action against him is 'clearly' statute-barred because to do so would be 'futile'."

In an appropriate case, I think it is likely that a court would refuse to give consent to proceedings under s. 6(2)(b) of the Act of 2013, if it was satisfied that the cause of action against IBRC it was proposed to litigate was "clearly" statute-barred, which would probably be a relatively easy task if the court was applying Irish law. However, this is not such a case.

Application of the law to the facts

24. This case presents considerable difficulty for the Court, because the Court is being asked to determine whether consent should be given to allowing a plaintiff residing in another jurisdiction to bring proceedings in that jurisdiction in circumstances where the courts of that jurisdiction have exclusive jurisdiction to deal with the plaintiff's claim and the rights and liabilities of the plaintiff and the proposed defendant are governed by the law of that jurisdiction. In essence, the position adopted on behalf of the defendant at the hearing of the application was that the Court cannot exercise its jurisdiction under s. 6(2)(b) properly in circumstances where the plaintiff has not addressed the substantive points in relation to the Statute of Limitations, and whether the plaintiff has a right of set off against the defendant. Counsel for the defendant invited the Court to direct the plaintiff to address those issues on affidavit.

25. In reply, counsel for the plaintiff referred to the decision of the Supreme Court in *Kutchera v. Buckingham International Holdings Ltd.* [1988] I.R. 61, where Walsh J. stated that it has been clearly established that in Irish law foreign law was generally proved by expert evidence and the burden of proving foreign law lies on the party who bases a claim or a defence upon foreign law.

26. As regards the contention of the defendant that the plaintiff's claim is statute-barred, the Court has no evidence whatsoever on which it could form a view as to whether, under English law, the plaintiff's claim is statute-barred, so that if it is, the Court might properly determine that it would be neither right nor fair for the Court to consent to the proposed proceedings being commenced in England. Taking a purely pragmatic view as to the task involved and the likely ability of the Court to determine, for the purposes of the application under s. 6(2)(b), whether, and to what extent, if any, the plaintiff's claim is statute-barred in English law, against the background that expert evidence of English law would have to be adduced and the submissions made before the Court could make a determination, it is difficult to conclude other than that the better course would be for the Court at this juncture to assume that the claim is not statute-barred, so that that issue can in due course be determined by an English court applying English law, in accordance with the contract entered into by the plaintiff with Anglo.

27. Similarly, if the plaintiff has a good claim for unliquidated damages against the defendant, whether the plaintiff would be entitled to set off the damages awarded to him against his indebtedness to the defendant on foot of the Facility Letter falls to be determined in accordance with English law. Therefore, in order to assess whether, even if the plaintiff is likely to be successful in his claim against the defendant, by reason of not having a right of set off, at the end of the day he will only have the status of an unsecured creditor with no prospect of recovering any part of his judgment in the Special Liquidation of the defendant, expert evidence on English law

would have to be adduced before this Court and submissions made to the Court. Whether this Court could ever conclude that reliance on Clause 16.1 of the Facility Letter would mean that there would be no advantage to the plaintiff in pursuing the proposed proceedings against IBRC is an absolute imponderable. On this point also, it seems to me that the better course would be that issue should be determined in due course by an English court in accordance with English law.

28. The paucity of evidence currently before the Court is wholly inhibiting. On the current state of the evidence, it is not possible even to form a view as to the current amount of the plaintiff's indebtedness to the defendant. Apart from the imponderable as to whether a right of set off exists, it is not possible to form a view, if it does exist, as to the extent to which it could benefit the plaintiff, if he was successful in his proposed proceedings against the defendant.

29. Notwithstanding the ambivalent position adopted by counsel for the defendant on this point, having regard to the nature of the claim by the plaintiff against the defendant in the proposed proceedings, which is a claim for unliquidated damages and equitable relief, it is quite clear that it is not a claim which could be resolved in the special liquidation of the defendant. Therefore, the question which remains is whether it would be right and fair that a foreign customer, such as the plaintiff, who did business with Anglo on the basis that the relationship of customer and bank would be regulated in accordance with, and governed by, the law of the jurisdiction in which the business was conducted and that the courts of that jurisdiction would have exclusive jurisdiction to deal with claims by the customer, should be put to the expense of proving in this jurisdiction the application of the law of the foreign jurisdiction to his claim, for the purpose of refuting a bald assertion that in accordance with the foreign law his claim is statute-barred and that he has no right of set off merely for the purpose of establishing that this Court should exercise its discretion under s. 6(2)(b) and consent to an action being commenced against IBRC (in Special Liquidation), in the foreign jurisdiction, England. I have come to the conclusion, albeit with a degree of diffidence, that it would be neither fair nor right to adopt that approach.

Order

30. Accordingly, there will be an order pursuant to s. 6(2)(b) of the Act of 2013 allowing the plaintiff to commence proceedings on the basis of and for the reliefs claimed in the exhibited proposed Claim Form.