

THE HIGH COURT

2005 2905 P

BETWEEN/

DENIS O'REILLY

PLAINTIFF

AND

FRANCIS GOFF AND BARNACULLA DEVELOPMENTS LTD

DEFENDANTS

JUDGMENT of Mr Justice Roderick Murphy dated 16th day of March, 2010.

1. Pleadings

The plaintiff claimed an order for specific performance of a verbal agreement made between himself and the first named defendant (Mr. Goff) under which the parties agreed that Mr. Goff, acting as agent for Mr. O'Reilly and on his own behalf, would purchase the shareholding of Mr. O'Reilly's and Mr. Goff's co-shareholders in Barnaculla Developments Ltd. (the Company). It was agreed that the purchase would be financed equally by the parties and that the shareholding would be registered as to 50% in the name of Mr. O'Reilly and 50% in the name of Mr. Goff.

Prior to the agreement there were 1,000 shares issued in the company which were held as follows:

Francis Goff – 250

Tony Donegan – 150

Paddy Doyle – 150

Aidan Gethings – 150

Kevin McCarthy – 150

Denis O'Reilly – 150

The company had as its object the development of property which included the development of sites at Silverdale, Kilmuckridge, Co. Wexford (phases 1 and 2), Silversands, Co. Wexford and Parkton, Enniscorthy, Co. Wexford.

The company successfully developed phase 1 of Silverdale, Kilmuckridge and Silversands, in Rosslare.

The defendants, in their defence, deny that the company had as its object the development of property at Parkton, Enniscorthy.

While the defendants agree that phase 1 of Silverdale and the development at Silversands were successful, it proved impossible to sell the development sites prior to the decision by Mr. Goff, Mr. Donegan and Mr. Doyle to establish a new company.

It was further denied that Mr. O'Reilly and Mr. Goff would continue as equal shareholders of the company for the purpose of the development of phase 2 of Silverdale or of Parkton or that they would purchase the shares of the other four shareholders or that Mr. O'Reilly would get 350 and Mr. Goff 250 of the shares acquired from those shareholders. It was also denied that Mr. Goff agreed to hold shares in the company in trust for Mr. O'Reilly. Mr. Goff says that he acquired the shares for the other shareholders solely and beneficially for his own benefit. The remaining shareholders transferred their shares to him. He denied that he held them in trust for Mr. O'Reilly. Mr. Goff had negotiated with the remaining four shareholders and agreed with them to acquire their shares for €343,576. Those shareholders transferred their shares to Mr. Goff in December 2004.

It is common case that Mr. O'Reilly did ask Mr. Goff on several occasions whether he would be interested in their continuing in business together and asked him for a share in the company. Mr. Goff denies that Mr. O'Reilly claimed that they had an agreement or that Mr. Goff held shares in trust for Mr. O'Reilly.

Mr. O'Reilly says that Mr. Goff procured his removal as the director of the company and filed a form suggesting that he had resigned. Mr. Goff says that there was a meeting of the board of directors held on 13th November, 2003 at which Mr. O'Reilly was present and it was agreed that all directors would resign. The company's accountants completed and filed the resignation documents of all directors in the Companies Registration Office, as requested at the said meeting. He denied that Mr. O'Reilly had been removed as director.

Both agreed that Mr. Goff refused to register Mr. O'Reilly as owner of the shares claimed and refused to re-instate him as a director of the company. Mr. Goff said that Mr. O'Reilly was not entitled to an account of monies received by the company other than as shareholder in that company. Mr. Goff says that at the date of that meeting Mr. O'Reilly indicated that he did not wish to sell his shares to Mr. Goff.

Mr. O'Reilly, as plaintiff, claimed that Mr. Goff had made fraudulent representations to him to induce Mr. O'Reilly not to seek to purchase the shares of the remaining shareholders.

Mr. O'Reilly claimed specific performance of the verbal agreement made in or about October, 2003 and sought certain declarations in relation to 50% of the shares held by Mr. Goff, and maintained that he was a director of the company and had been invalidly removed and sought further injunctive relief.

Mr. Goff denied any such representation and denied that Mr. O'Reilly had suffered any loss.

2. Orders of the Court

Following the plaintiff's notice of motion seeking certain injunctive relief by order dated 17th September, 2005, Laffoy J. directed, on foot of the undertaking made by Mr. O'Reilly, that:

(i) Mr. Goff be restrained from selling, disposing of or mortgaging, pledging or otherwise discharging the 50% of the shareholding purchased by him from "the plaintiff and the first named defendants co-shareholders" in the company, and

(ii) that Mr. Goff be restrained from exercising any voting rights or other rights attaching to 50% of the shares in the company.

A similar and extended order was made by Clarke J. on 19th December, 2005, restraining the company pending the trial of the action from disposing of or dispersing of the net proceeds obtained from the sale of the residential units and the residential development situate in Silverdale, Kilmuckridge, Co. Wexford - said net proceeds of sale being the gross proceeds thereof after the deduction of monies properly due to financial institutions and to Goff Developments Ltd for the construction of the aforesaid units.

3. Correspondence

Before proceedings issued Mr. O'Reilly wrote to Mr. Goff on 21st April, 2005, referring to his continued concern regarding regularising their business affairs in relation to the company and requesting financial information which had been promised through the company's accountant, Mr. Redmond, and in relation to the 50/50 shareholding in the company. A further letter was sent to Mr. Goff on 29th July, 2005, threatening proceedings. On 5th August, 2005, Mr. Goff replied to Mr. O'Reilly's solicitors stating that no formal discussions had ever taken place with regard to the shareholding of Barnaculla Developments Ltd.

4. Evidence on affidavit

By averment made in his affidavit on the 7th October, 2005, Mr. Goff denied that there was any discussion between Mr. O'Reilly and himself concerning any proposal to cause a 50/50 shareholding in the company between them or concerning the possibility of Mr. Goff entering into any negotiations on behalf of Mr. O'Reilly with the other shareholders. (paragraphs 6 and 12).

Mr. Goff exhibited the minutes of the meeting of the board of directors of the company of the 13th November, 2003.

The attendees included Mr. Donegan as Chairman, Mr. Doyle as Secretary. The other directors were Mr. Gethings and Mr. O'Reilly and Mr. Goff. Apologies were received from Mr. McCarthy. The auditor, Paul Redmond, was in attendance.

The unsigned minutes in that exhibit stated as follows:

"The following was discussed and agreed at the meeting.

- All the shareholders of the company would sell their shares to Mr. Francis Goff for an amount which was agreed at €85,894 based on the draft financial statements.
- Each director would be responsible for the sale of at least one unit in Rosslare due to the fact that they were slow to close at the moment.
- If by the 30th June, 2004 they were not sold then the properties would be taken out by each director.
- At this time Mr. Francis Goff would then purchase the shares at an agreed price.
- The running of the company was handed over entirely to Mr. Francis Goff in order to permit him to commence Phase 2 in Kilmuckridge.
- All directors would resign at this date in order to facilitate Mr. Goff at this time.
- Jason Goff to be appointed as director.
- Damian Goff to be appointed as director and secretary.

The (sic) concluded the meeting."

In his replying affidavit dated the 7th November, 2005, Mr. O'Reilly says that at no time at the meeting of the 13th November, 2003, was it ever agreed that all the shareholders of the company would sell their shares to Mr. Goff; nor that Mr. O'Reilly would resign as director of the company or that Mr. Jason Goff or Mr. Damien Goff would be appointed as directors of the company. He concluded that the minutes was prepared by Mr. Goff to support "the untruthful and

inaccurate account" given by him in his affidavit. It was not an accurate record of the meeting of the 13th November, 2003. The document had never been seen or received by him prior to its being exhibited in Mr. Goff's affidavit.

5. Evidence of Denis O'Reilly

Mr. O'Reilly gave evidence of his thirteen years experience in banking with AIB and ACC following his graduation.

Both Mr. Doyle and Mr. McCarthy were clients of ACC and invited him to join them in 1999 in the company.

In the first meeting in 1999 there were six shareholders. The first phase of the company was profitable. Each of the new shareholders had 15%; each of the six new shareholders had 15% each. From 1999 to 2003 the venture was successful.

However, six shareholders were difficult to manage as they had different objectives. No dividends had been declared.

In 2003 two directors wanted to set up a separate company. Three had decided not to support that venture. Mr. O'Reilly believed that there was still profit to be made by the company and agreed on a 50/50 shareholding between Mr. Goff and himself. He already had 15% and would buy another 10% to bring him up to Mr. Goff's 25%. Mr. Goff had agreed to buy the others out.

A meeting was held on the 13th November, 2003, with all members. The meeting dealt with the valuation of the 15% interest rate shareholder and a consideration of €85,000 was agreed and share transfer forms were produced. There was delay in one of the shareholders not transferring until December, 2004.

Mr. O'Reilly said there were no minutes of the meeting of the 13th November, 2003.

He disagreed with the minute produced in Mr. Goff's affidavit.

He said on the 23rd March, 2004, he received a telephone call from Mr. Goff regarding a delay in the tax audit. Mr. Goff assured him that there was no difficulty with the transfer of shares to him. Mr. Goff owed him some money but was not in a position to pay.

On the 19th April, 2005, he spoke to Mr. Goff regarding the unfulfilled promises. Mr. Goff promised to send Mr. O'Reilly a cheque of €14,000 and a further cheque of €65,000 later.

On the 25th April, 2005, a meeting took place at the Airport Hotel regarding an agreement of the 19th April, 2005, which was reduced to writing on the 21st April, 2005.

Mr. O'Reilly in his evidence referred to the letter of the 21st April, 2005 which, he said, reflected the agreement made between them on the 19th April. A meeting was arranged for the following day after Mr. O'Reilly had got the financial information from Paul Redmond, the auditor and accountant. As that information was not forthcoming, Mr. O'Reilly assumed the meeting would not take place.

On the following Tuesday, the 26th April, the cheque for €14,000 which had been promised by Mr. Goff on 19th April was sent to Mr. O'Reilly.

Mr. O'Reilly believed that the affidavit of Mr. Goff dated the 7th October, 2005, was a contrivance.

Five months earlier, on Wednesday the 28th April, 2005, Mr. O'Reilly said that, by arrangement, he telephoned Mr. Goff at 9.00 am and taped that conversation. The court has a transcript of that conversation, which referred to the letter of the 21st April, 2005. In particular, at pages 26 to 28 of the taped conversation Mr. Goff indicated that they should "go on to the 50/50 share hold (sic) in Barnaculla". Mr. Goff read from the letter of the 21st April, as follows:

"As per our original agreement and as per our numerous conversations over the past year clarifying this aspect, Francis Goff and Denis O'Reilly will hold a 50 % shareholding respectively in Barnaculla Developments Limited."

Mr. Goff then said:

"Now that's fine. I won't go back on any agreement that I ever made with anyone. But we will have to look at the workings of that and should one of us have 51/49; if 50/50, is it advisable in the event of anything happening to one or the other. So we need to get the legals to look at that, right?"

Some lines later Mr. Goff said "As I've said, I have no hidden agenda on any of this so I think we can put this to bed pretty quickly". Mr. O'Reilly referred to their discussion that he buy 5% off Mr. Goff so that both would have 20%; "buy back all the other guys, buy the other guys out, right. And we would share that cost equally, which means we would end up with 50/50".

Mr. O'Reilly said that once they had agreed in principle if the accountant and the legals come up with a better way of doing it, then he was all ears.

Mr. Goff replied "Yeah" and added: "If I say if (sic) that seems to be workable and fine on paper but I just need to let that go through Paul Redmond and let it run across the legals and think that's wise for both of us."

Later at p. 63 Mr. O'Reilly said that there was nothing else holding up doing the share transfer and just getting it sorted and putting (the houses) on the market and selling it and being at 50/50, Mr. Goff agreed that in simple terms that was correct. He would be speaking to Paul (Redmond) later that morning to see the timeframe to put "the stuff together".

In cross-examination he agreed that it was a verbal contract and at the board meeting of 13th November, 2003, was important in some aspects such as the amount of payment for shareholding. He did not accept that the minutes exhibited

in Mr. Goff's affidavit reflected the discussion repayment. He did not know if it was a minute of the meeting.

He said that the agreement with Mr. Goff had come about when they were attending a wedding. Mr. Goff had built his house. He was introduced by Paddy Doyle. He got on well with Mr. Goff. They had a healthy respect for one another. He had a verbal agreement with Mr. Goff regarding the building and renovation of his house. Matters relating to the company were discussed orally.

He explained that they had agreed there were too many directors and that he would take 5% from Mr. Goff's 25% to make them equal in shareholding and that Mr. Goff would acquire the shareholding of the other parties with the price to be determined by Paul Redmond.

It was put to Mr. O'Reilly that his claim at (b) of the statement of claim required a declaration that Mr. Goff purchase his shares and the remaining shareholders shares in the company on foot of an agreement made between him and Mr. Goff in October, 2003 and that that was consistent with Mr. Goff taking the entire shareholding. Mr. O'Reilly replied that he was unable to say what precisely the terms of the deal were. While he relied on the telephone conversation he said that there was an agreement beforehand. He said on the face of the minutes that he was present but he did not agree or disagree. He was not disputing that all the others agreed to sell. He said he remained silent on that issue. The resignation of directors was not discussed at the meeting nor indeed was the appointment of Jason and Damian Goff discussed.

In the funding of the company he together with the other shareholders had put up 15% of the initial capital and subsequently provided loans. All of the previous dealings were oral as was the agreement to have a 50/50 shareholding. He believed that the inclusion of his shareholding with the other shareholders to be purchased by Mr. Goff was a device to get the other shareholders agreement.

He indicated how the value of the loans was to be dealt with. There was no follow up after the meeting. He agreed that he made no offer of payment to Mr. Goff.

6. Auditor's evidence

Mr. Paul Redmond CPA referred to the minutes of 13th November, 2003. He remembered that he got them soon after the meeting. All shareholders agreed that they would "sell their shares". The directors resigned and Jason and Damian Goff were appointed. As a result he prepared a document and filed it on behalf of the company.

In cross-examination he said he knew Mr. Goff since 2000 and would have known of him before that as a developer in Wexford.

On 13th November, 2003, he attended the meeting as auditor of the company. At the meeting one of the shareholders, Mr. McCarthy, did not agree to sell his shares but later in December, 2003 transferred his shares to Mr. Goff.

He agreed that it was not the function of the auditor to prepare documents for the Companies Registration Office. It was put to him that there was no resolution. He said there was an authorisation given to Mr. Goff at a second meeting held on the same date when Mr. Goff was in the chair following on the resignation of all of the other directors. That meeting was held after tea time at a different venue. He was asked how the other shareholders signified their agreement and he said that the chairman had a meeting with them. He drew up the minutes within a week after that meeting from the notes of Mr. Doyle who had chaired the first meeting.

He agreed that there was no resolution that he should submit the documents to the Companies' office. He agreed that that was a matter for the company secretary.

It was put to him that he did not get a letter from Mr. O'Reilly. He said that the minute recorded Mr. O'Reilly's resignation. It was taken as a letter of resignation.

It was put to him that if the directors had resigned at the first meeting that their inclusion in the minutes of the second meeting was inconsistent. He agreed that that was inaccurate, the time was wrong and there was no letter of resignation. He said he filed the form on 27th September, 2004, which was over a year later.

7. Evidence of Francis Goff

Mr. Goff said he was a director and shareholder of the company since 1999. He knew Mr. Doyle who asked him if he would become part of the development company to look at potential sites with others. His interest was in the construction side of the development. He did not know Mr. O'Reilly but knew Mr. McCarthy.

From 1999 to 2003 Kilmuckridge was zoned with a potential of 35 to 40 houses. Phase 1 consisted of 21 units with sewerage, up ground at the back of the site. His company did the construction work while Mr. Doyle and Mr. Donegan looked after sales.

Notwithstanding the enthusiasm of the early stages of the development in 2003 sales proved difficult and were slow.

He had dealings with Mr. O'Reilly and got on well with him. He knew him having sold a site to him and his father and brother. He renovated Mr. O'Reilly's home and built a house in his garden for his brother.

He had discussions with Mr. O'Reilly regarding finance by the bank and by way of shareholders funds and loans.

In March, 2003 it was suggested to Mr. Goff that he would buy out the others shares. Mr. Doyle and Mr. Donegan were busy with their other businesses. The majority wanted out. It was open to all to buy. He was building. There was concern regarding banking. He dealt personally with AIB and Bank of Ireland. The first option was that he or others would buy sites.

He referred to a letter dated 30th September, 2003, re winding up of Barnaculla where it was noted that each shareholder

had already taken "ownership" of one apartment, in order to speed up the winding up process. The letter enclosed a breakdown of finances (not included in the letter exhibited in Mr. Goff's affidavit).

The second meeting on 13th November, 2003, valued the 19 remaining sites as a basis for the valuation of the shares to be transferred for the sum of €85,894.

Mr. Goff could not recall there being a "terrible amount of discussion on it". It was more or less expected. His recollection was that the meeting went quickly and they had a few drinks afterwards. The minutes were accurate. He had to tidy up with AIB more than with Bank of Ireland. There was little discussion but no objection regarding Damian and Jason Goff as directors. He could not remember any one person's contribution standing out.

He said that Mr. O'Reilly did not have an agreement prior to the meeting. He could not remember any detail of Mr. O'Reilly purchasing 5% of shares from him to have a 50/50 share. He did not know how it was going to work. There had been discussion in March to May, 2003 but nothing came of it.

Following that meeting he said he proceeded to re-organise the bank finances and paid off AIB and paid for the shares himself. He raised finance and paid off all shareholders in 2004. He had held on to an apartment. He did not buy Mr. O'Reilly's shares. He expected that he would purchase Mr. O'Reilly's shares if there were no potential going forward in the company.

In cross-examination he said he understood the meaning of the oath. When he said at para. 6 of his affidavit: "there was never any discussion" he meant that there was no agreement. He realised that this was incorrect.

It was put to him that para. 7 of that affidavit was not reconcilable with para. 6. He had stated:

"Although on a number of occasions from February, 2004 onwards the plaintiff (Mr. O'Reilly) did ask me whether he could agree a 50/50 shareholding in the company. I made it very clear to him on each occasion that he raised the subject that I had no interest in transferring any further shares to him."

It was put to him that Mr. O'Reilly's averment at para. 9 of his first affidavit referring to the letter of 21st April, 2005, was followed by a conversation where Mr. Goff confirmed their agreement of the 50/50 shareholding in the company saying he would never go back on the deal and undertook to attend to the matter immediately was that he contradicted in para. 18 of his replying affidavit wherein he said:

"The alleged statements attributed to me described in paragraph 9 of the plaintiff's first affidavit were never made."

Mr. Goff replied that this was in relation to the 50/50 shareholding. He said that no firm deal was made on the percentage of shareholding.

In para. 13 of Mr. Goff's affidavit he said that:

"Prior to receipt of the plaintiff's letter of 21st April, 2005 I had spoken by telephone to him on 19th April and had informed him that there was no agreement regarding sale of additional shares in Barnaculla Developments Ltd and following receipt of the letter of 21st April, 2005, I again telephoned and denied the allegations in his letter (other than his proposals that he should acquire a 50% shareholding, which I always rejected), and that "in my view he was well aware that was the case. I considered his allegations to be preposterous, but I did not reply to them in writing."

It was put to him that the transcript of the telephone conversation was at odds with that. He said he was dissecting the letter of 21st April in his conversation. He did not know what hidden costs and due diligence there would be. He said they may have had discussions but no agreement.

He said that when they got some clarification and information from Paul Redmond they could then sit down and discuss a time frame.

It was put to him that para. 13 of his affidavit saying that he informed Mr. O'Reilly that there was no agreement regarding the sale of additional shares was inconsistent with the transcript of the telephone conversation which did not deny the agreement. He said that maybe he was being polite. He had never said in conversation that the allegations contained in that letter were preposterous.

In relation to the meeting of 13th November, 2003, he said that Mr. O'Reilly could have said that he wanted more shares. Other shareholders wanted out.

It was put to him that the minutes of the second meeting of the Board of Directors were inaccurate as the meeting was not held at the Square in Ferns at 14:00 hours and did not include Mr. Redmond but was signed by him in relation to the appointment of Damian as director and secretary of the company. He stood over those minutes and the minutes of a third meeting also held at 14:00 hours at the Square, Ferns on 13th November stated, in relation to the resignation of directors, that:

"A letter of resignation as a director duly compiled by Anthony Donegan, Aidan Gethings, Denis O'Reilly, Patrick B. Doyle and Kevin McCarthy and dated 13th November, 2003 was laid before the meeting and recorded."

8. Submissions of the plaintiff

The issue before the court is whether or not an agreement was reached between the parties in October, 2003 in relation

to Mr. Goff holding 50% of the shareholding in the company in trust for Mr. O'Reilly. The letter of 21st April, 2005, sent by the plaintiff to Mr. Goff led to the telephone conversation which confirmed a concluded agreement.

Mr. O'Reilly said that he expected Mr. Goff to speak to Mr. Redmond, the accountant, and to arrange for the transfer of shares. However nothing happened. In late June, Mr. Goff said he had changed his mind and would not go ahead. Mr. O'Reilly took legal advice and proceedings issued when he was concerned that funds could be moved from the company.

Neither Mr. Goff nor Mr. Redmond explained the difference between the two versions of the minutes.

He referred to the orders of Laffoy J. of 17th September, 2005, and Clarke J. of 19th December, 2005.

9. Submission of the defendants

Counsel for the defendants disagreed that the case constituted a straight "swearing match" as was claimed by the plaintiff. The issue was whether the parties arrived at a concluded agreement which had the intent and capability of forming a binding legal contract. The onus of so proving lay on the plaintiff.

It was submitted that the claims made by the plaintiff as to the alleged terms of the agreement were so varied as to lead the Court to conclude that even on the plaintiff's evidence the parties were never *ad idem*, that is to say that there was no concluded agreement.

The plaintiff had to satisfy the court that prior to the meeting of 13th November, 2003, when Mr. Goff agreed to buy the outstanding shares, that there had been a concluded agreement between Mr. O'Reilly and Mr. Goff.

The defendants submit that the plenary summons of 26th August, 2005, included a reference to the purchase of Mr. O'Reilly's shareholding in the company and that that reference was repeated in the prayer of the statement of claim. Nowhere in the claim was it pleaded that the plaintiff would contribute to the cost of the purchase of the shares or that he would purchase 5% of Mr. Goff's shares.

In his affidavit of 19th August, 2005, the plaintiff did say that it was agreed that the shares would be financed equally by him and by Mr. Goff.

In his letter of 21st April there was a reference to him purchasing 5% of Mr. Goff's shares at the price per share which was used to buy out the previous four shareholders.

He continued:

"As agreed Francis Goff would then buy back the shares from the aforementioned directors (financed directly by a loan from Barnaculla Developments Ltd.)."

It is submitted that this suggested that the parties agreed to a transfer of a 5% share from Mr. Goff to Mr. O'Reilly prior to the purchase of the shareholding from the other directors and that the price for the former would be attained by the price for the latter. That was simply not possible.

Moreover, the letter of 21st April, 2005, in contrast to that of 29th July refers to the purchase of the shares and thereafter a transfer of 35% to the plaintiff.

It is submitted that no terms were agreed before the meeting of 15th November, 2003, or at any time. At no stage up to 29th July, 2005, did the plaintiff proffer any funds for the purchase of the shares. The suggestion that the purchase of the shares would be financed by a loan from the second named defendant would be a breach of company law.

10. Decision of the Court

The defendants submit that the evidence put forward by the plaintiff did not demonstrate that there was any concluded agreement.

The letter of the 29th July, 2005, from the plaintiff's solicitor to Mr. Goff refers to a transfer of 35%.

However, it seems clear to the court that the 35% should read 5% as it is clear from the phrase following "of same to effect an equal split" is not in contrast to what was stated in the letter of the 21st April from the plaintiff to the defendant where the plaintiff asserts the terms of the agreement.

It is significant that the dealings between Mr. O'Reilly and Mr. Goff, including the refurbishment of the former's house and the purchase and development of the site by Mr. Goff were done on an oral basis. Moreover the original acquisition of 15% of the shares by Mr. O'Reilly was agreed orally.

The letter of the 21st April referred to an oral agreement in principle between the parties.

Moreover, the telephone conversation of 28th April, 2005, acknowledges and confirms the previous oral agreement. The referring of the agreement to accountancy and legal advisers was a reference to the tax and legal implementation of that agreement. The subject matter and the consideration of the transfer were agreed. The mode or mechanics of the transfer was a matter for the tax advisor and solicitors.

The meeting of the 13th November, 2003, dealt with the agreement between the other shareholders as transferors and Mr. Goff as transferee of their shares. It does seem to have been done on the basis that all shareholders, including Mr. O'Reilly, would sell to Mr. Goff. There is, however, no case made by the defendant that Mr. O'Reilly agreed to sell his shares to Mr. Goff. There is no evidence to suggest that this was a stratagem to facilitate a deal being done. Moreover,

there was no demand made by Mr. Goff that Mr. O'Reilly execute a share transfer form as other shareholders were asked to do. All but one did so. The remaining shareholder delayed until December of the following year.

The averment of the plaintiff that he would acquire 5% of the shareholding of Mr. Goff are not inconsistent with the averment that the agreement provided for Mr. Goff holding shares in trust for him to the extent that both would have equal shareholding after the agreement with the other shareholders.

It is clear that whatever the manner of dealing between the parties that Mr. O'Reilly would be in a position of equality with Mr. Goff. Whether that was done before the meeting of the 13th November, 2003, or afterwards by reference to the price then agreed did not affect their agreement. What was not agreed was the manner of implementing of what had been agreed. This was left to the tax advisers and lawyers.

The agreement that Mr. Goff would buy back the shares from the other directors and finance that purchase directly by loan from the company may have been inconsistent with the provisions of s. 60 of the Companies Act 1963. This had to do with the manner of implementing the agreement which was subject to further advice. It does not, of itself, invalidate the agreement between the parties.

While there was no agreement as to when Mr. O'Reilly would pay for the shares, it is significant that Mr. O'Reilly, given his connections with banking, had access to funds which in the absence of agreement, would become due and owing on the date of transfer. It seems to the court that this was implicit in the agreement once the price was agreed.

The court is satisfied that the plaintiff has discharged the onus of proof in relation to the oral agreement of October, 2003 which was affirmed in the recorded telephone call dealing with the plaintiff's letter of 21st April, 2005. That agreement was to be implemented by reference to tax advice from the company accountant and solicitors. The issue of payment by the plaintiff to the first named defendant did not arise but was implicit in the agreement as to the proportion of shares and as to the consideration to be paid.

In the circumstances the court will make an order for specific performance of the agreement made between the plaintiff and the first named defendant in terms of the first paragraph of the general endorsement of claim.

It follows that the plaintiff is also entitled to a declaration in terms of paras. 2 and 3.

The court is not satisfied from a consideration of the evidence that a letter of resignation of Mr. O'Reilly was laid before the meeting as is indicated in the third minute to the meetings of the 13th November, 2003 and, accordingly, the court will make a declaration in terms of para. 6 of the general endorsement of claim.