Neutral Citation No. [2005] IEHC 137

THE HIGH COURT
CIRCUIT COURT APPEAL
MIDLAND CIRCUIT COUNTY OF WESTMEATH

[Record No. 2005 44CA]

BETWEEN

RAYAN RESTAURANT LIMITED

PLAINTIFF

AND
JULIES COMPANY RESTAURANT LIMITED AND CLAUDIA PASCAU AND BY ORDER CATHERINE MURPHY-FLYNN

DEFENDANTS

AND
JAMEL MENNAD

THIRD PARTY

Judgment of Mr. Justice Declan Budd delivered on 18th day of April, 2005

1. This matter comes before the High Court by way of two motions for security for costs against the plaintiff company as part of preliminary applications to the hearing of the plaintiff's and third party's appeal from the whole of the judgment of the Circuit Court given on 17th November, 2004. The background to the two applications for security for costs is that there was a hearing of equity proceedings in the Circuit Court in Mullingar on 16th and 17th November, 2004. Premises at High Street, Athlone, which were owned by the late Barra Flynn, were leased by him to his wife, the third defendant, Catherine Murphy-Flynn. These had then been demised by her to the plaintiff company by assignment dated 1st August, 2002 for the purpose of running a restaurant there. The plaintiff company was beneficially owned by Jamel Mennad and his wife Fatma-Zohra Azizi. There was a contemplated agreement between the third party and the second named defendant Claudia Pascau that a second company, namely the first defendant Julies Company Restaurant Limited, would be the vehicle for managing the restaurant which, it was envisaged, would be carried on there by the third party and the second defendant. Apparently, there were unhappy differences between the third party and the second defendant and on 23rd July, 2003, Mr. Flynn re-entered the premises allegedly for failure to pay the rent. It would seem that the third defendant alleges that this brought the term under Lease and Assignment to an end. Apparently, the second defendant has since been in physical occupation of the restaurant premises as caretaker for the third defendant, subsequent to the reoccupation on the alleged grounds of the failure to pay the rent. The plaintiff company contests the lawfulness of the entry and occupation of the premises by the defendants and in an amended equity civil bill sought the relief of a declaration that the plaintiff is the lawful tenant pursuant to the assignment and lease and also sought possession of the premises, an injunction and damages. The nub of the third defendant's defence would appear to have been that the assigned term under the lease was determined on or about 23rd July, 2003 upon the re-entry by the third defendant's predecessor in title, Barra Flynn, on the demised premises, allegedly in accordance with the terms of the lease and in consequence of the rent therein reserved being unpaid for 21 days or more having become payable. The third named defendant counterclaimed on the basis of lawful determination of the term under the lease and sought a declaration that the predecessor of the third named defendant had lawfully determined the lease of 19th April, 1996. The third named defendant had also been joined by order of Judge Reynolds on 16th November, 2004, as the personal representative of the late Barra Flynn.

2. A defence to this counterclaim was delivered by the plaintiff which was essentially a denial of the lease having been lawfully determined. The matter was heard over two days in the Circuit Court in Mullingar and the plaintiff's claim as against the defendants was dismissed with costs to include reserved costs against the second named defendant with an order over against the third party. A declaration was also made in terms of para. (a) of the reliefs sought in the third named defendant's counterclaim and an order for costs of the third named defendant's counterclaim against the second named defendant with an order over against the third party. A sum of money had been lodged in court by the plaintiff in the course of a motion for summary judgment brought by the third defendant on foot of her counterclaim in respect of arrears of rent. A sum of about €11,250 remains lodged in court pending the determination of the proposed proceedings by the second named defendant with liberty to apply. An order was also made refusing the plaintiff's application for a stay on the orders made by the Circuit Court. It would seem that there is a dispute between the second defendant and the plaintiff as to who is entitled to the sum lodged and it is probable that the third named defendant would probably be involved in this contest too.

3. I have set out the background story to these two motions for security for costs, which motions relate to the plaintiff's appeal in the High Court only and not in respect of the costs previously incurred in the Circuit Court proceedings. One would have expected this case to have remained on the Midland Circuit but the case was transferred from the Midland Circuit to the Dublin Circuit and hence the two motions in respect of security of costs came before the High Court sitting in Dublin. It is important to note that the matter comes before this court on the basis of the motions and affidavits filed. This court is not dealing with the substantive issues between the parties in respect of the terms of the lease and assignment nor the dealings between the parties in respect of the payment of rent, letting out of the premises or indeed the alleged non-payment of rent or the alleged forfeiture or whether there was any notice given of the intention to effect a re-entry and forfeiture for non-payment of rent, or what transactions occurred between the parties and whether estoppel should apply. I emphasise that these two motions are being dealt with on the basis of such evidence as the parties have chosen to put before this court on affidavit and on the basis that the question of whether there was a formal demand for rent or whether there was an exemption for this contained in the lease are not matters before this court at present. This court must take cognisance of the existing order of the Circuit Court and the fact that both the plaintiff and the third party have appealed the order of the Circuit Court so that one could expect a full hearing in the High Court in due course and that it is on this basis that these two motions for security of costs have now been brought by the second and third defendants. Counsel for the third defendant says that the plaintiff company would not be in a position to meet the costs of the appeal if the plaintiff again loses the main action. Accordingly, the third defendant seeks security for costs of the appeal. She relies on the affidavit of Declan O'Flaherty, the third defendant's solicitor, which was sworn on 8th February, 2005. He refers to the proceedings before the learned Circuit Court Judge on 16th and 17th November, 2004 and the order made. This included an order dismissing the plaintiff's claim against the defendants with costs to include reserved costs and an order making a declaration in the terms of para. (a) of the reliefs sought in the third named defendant's counterclaim which was a declaration that the third named defendant had lawfully determined the lease of 19th April, 1996. He then indicated that the third defendant was concerned that the plaintiff was not in a position to meet any order as to costs that may be made if the plaintiff's appeal were unsuccessful. He stated that the plaintiff was a limited liability company with no assets whatsoever. He also said that he had requested Behan & Associates, Legal Cost Accountants, to provide an estimate of the party and party costs for the third defendant in respect of the proposed appeal and that the cost accountants having considered the full index of pleadings, counsel's advice on proofs and the order of the learned Circuit Court Judge, concluded that the estimate of the probable party and party costs for the defence of this appeal by the third defendant would amount to the sum of €51,059.75 and exhibited a copy letter from Behan & Associates with an annexed schedule. He also averred that he had been advised by senior counsel that the estimate of four days for the appeal might well be exceeded. He further stated that the plaintiff is a company which could be dissolved without further notice and with no assets whatsoever and that the third defendant had no comfort whatsoever

that she would receive any amount of any costs that may be awarded against the plaintiff on the appeal. He went on to say that the directors of the plaintiff company were the third party and his wife and that the third party had given evidence in the Circuit Court to the effect that he had no assets within the State (although he claimed to own an apartment in Belgium). He then referred to the fact that in an affidavit sworn by the third party's wife, Fatma-Zohra Azizi on 13th August, 2003, on behalf of the plaintiff company, she had averred that the plaintiff had been unable to discharge rent and that the third named defendant's predecessor would seek to exercise his right of forfeiture and re-entry under the lease, the subject of the proceedings. He also indicated that as soon as he received the notice of appeal he sought the advice of counsel and instructed Behan & Associates to prepare the estimate exhibited at "DOF 2" in his affidavit.

4. A replying affidavit, sworn on 18th February, 2005, by Mrs. Azizi, was filed by the plaintiff's solicitor. She averred that she was a director of the plaintiff company with the other director being her husband, the third party, and that they have lived in Ireland since 1997 together with their four children and have no plans to leave Ireland. She stated that the plaintiff had expended a large sum of money in the region of €131,000 equipping the restaurant prior to its opening in May, 2003 and that the plaintiff paid all rents due and owing from August, 2002 to June, 2003. He said rent was due to the third defendant's predecessor on 1st July, 2004 (presumably an error for 2003), and on 24th July, 2003 the landlord, entered upon the plaintiff's leased premises and changed the locks. She stated that the plaintiff relied upon the equitable jurisdiction of the court seeking relief from the purported termination of the plaintiff's tenancy. She referred to €11,250 which was lodged in court and the expenditure of €131,000 in equipping the restaurant and then made the crucial point that the plaintiff's financial difficulties were as a direct result of the defendant's actions, the subject matter of the proceedings.

5. In response a supplemental affidavit of Declan O'Flaherty was filed stating that Mrs. Azizi was mistaken in a number of respects. Prior to the date of determination of the tenancy the subject matter of the proceedings, the plaintiff company was insolvent and its reduced circumstances were not caused by any wrongful act of the third named defendant. He also pointed out that the suggestion that the plaintiff had spent €131,000 in equipping the restaurant was at variance with an acknowledgment in the Circuit Court that no such sum was spent. Furthermore the lodgement of €11,250 in court by the plaintiff was directed by the Circuit Court as a relief to the third defendant who had brought a motion for summary judgment.

6. Senior counsel for the third defendant points out that neither of the replying affidavits of Mrs. Azizi suggest that the plaintiff could meet the costs if the appeal were lost and costs awarded to defendants. In her first affidavit Mrs. Azizi said that the plaintiff's financial difficulties were as a direct result of the defendant's actions. In her supplemental affidavit sworn on 11th April, 2005 she reiterated this point and pointed out that the restaurant opened for business in or around 20th May, 2003 and the plaintiff company was locked out of the premises on 24th July, 2003 so that since that day she had no knowledge of the profits made by the restaurant. She went on to say that she could confirm that no assets are held by the plaintiff company other than the lease which is at issue in these proceedings. In addition, neither of her replying affidavits suggests that the plaintiff could meet the costs if the appeal were lost. She reiterates in both affidavits that the reason why the plaintiff is not in a position to meet such costs is the wrongdoing of the third defendant's agent.

7. Counsel for the third defendant acknowledges that if appropriate evidence were adduced by the plaintiff to the effect that it was the wrongdoing of the defendants which caused the plaintiff's parlous financial state then this could be a ground for resisting the motions for security for costs. However, on the case law it would seem that a bare assertion on behalf of a plaintiff that the plaintiff company has been rendered insolvent by alleged wrong-doing is not sufficient, as it is necessary that the plaintiff should show that but for the wrong-doing the plaintiff would have been solvent.

8. It is significant that the third party has not sworn or filed an affidavit on behalf of the plaintiff company and no suggestion has been made by him that the plaintiff company has assets from which to pay costs and indeed his wife has averred at para. 9 of her affidavit of 11th April, 2005 that no assets are held by the plaintiff company other than the lease which is at issue in the proceedings. Counsel for the second defendant, Claudia Pascau supports what senior counsel for the third defendant has argued. He supports the argument that the bald allegation of the financial difficulties of the plaintiff company as having been caused by the re-entry and purported forfeiture is inadequate. Counsel referred to the affidavit of the second defendant's solicitor Patrick J. Farry which was sworn on 4th March, 2005. He commented on the fact that the third party, the former business partner of the second defendant, had not made the response on behalf of the plaintiff and went on to say that his instructions were that it was the fault of the third party that financial difficulties arose. The third party had obtained approximately €52,000 from the second defendant and had failed to invest this money in the business of the first named defendant to obtain the landlord's approval for the agreed assignment of the lease from the plaintiff company to the first named defendant company, namely Julies Company Restaurant Limited, and that his failure to comply with planning and other statutory requirements caused the losses of which the third party now complains.

9. His client, the second defendant, rejected any suggestion that she is the cause of the plaintiff's financial difficulties and any such difficulties predated his client's involvement with the third party or the plaintiff company. Counsel for the second defendant pointed out that by letter dated 25th February, 2005, he had written to the plaintiff's solicitors seeking information about the compliance of the plaintiff with its company law, planning law and accounting obligations and sought details of its tax returns, annual accounts and bank accounts. Counsel for the second defendant put it that his client had sought particulars and proof of the plaintiff's bald allegation to little avail and that the court should take cognisance of the fact that the plaintiff and third party were given this opportunity to furnish documents in proof of the plaintiff's assertion that the plaintiff's parlous financial state was due to the defendant's wrongdoing. In an earlier affidavit sworn on 14th February, 2005 Mr. Farry said that it had been confirmed at the hearing of the Circuit Court action that the plaintiff was a limited liability company with no assets whatsoever.

Legal position

10. The motions are brought pursuant to s. 390 of the Companies Act, 1963 which states:

> "Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter, may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given."

11. It is not for this court at this stage to form a view on whether the learned Circuit Court Judge was correct in determining the outcome of the Circuit Court proceedings or on whether the plaintiff will succeed on a full re-hearing. However, the outcome in the Circuit Court would seem to point to the fact that the outcome is indicative that, as the defence and counterclaim succeeded and the learned Circuit Court Judge was persuaded of the merits of the defendant's case, there would appear at least to be *prima facie* an arguable case on the part of the defendants.

12. Counsel has referred me to a number of cases. Firstly in *Jack O'Toole Limited v. MacEoin Kelly Associates and Wicklow County*

Council [1986] I.R. 277, the Supreme Court (Finlay CJ, Henchy, Griffin and Hederman J.J. concurring; McCarthy J. dissenting in part) held that to discharge the onus of proof, which is upon a company against whom a s. 390 application is made, it is not sufficient to make a mere statement of fact that the insolvency of a company has been caused by the wrong which is the subject matter of the claim. At p. 283 Finlay C.J. said:-

> "It is clear that the making of any order under s. 390 is a matter of discretion to be exercised having regard to all the relevant circumstances of the case, and the appropriate approach has recently been laid down by this Court in the judgment of McCarthy J. in *S.E.E. Company Ltd v. Public Lighting Services Ltd.* [1987] ILRM 255 and it is unnecessary for me to repeat it here.
>
> It is clear that there is no presumption, either in favour of the making of an order for security for costs or against it, but I am satisfied that where it is established or conceded, as arises in this case, that a limited liability company which is a plaintiff would be unable to meet the costs of a successful defendant, that if the plaintiff company seeks to avoid an order for security for costs it must, as a matter of onus of proof, establish to the satisfaction of the judge the special circumstances which would justify the refusal of an order.
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> With considerable reluctance, I find myself in disagreement with McCarthy J. on one issue only in this case, namely, as to whether the plaintiff has discharged the onus of establishing as a *prima facie* matter the fact that the company was made insolvent and incapable of satisfying an order for costs by the very wrongs of which it complains against these two defendants."

13. Having set out the facts concerning the company, the Chief Justice went on to say:-

> "It is clear that s. 390 of the Act of 1963 deals with the situation where an insolvent company is suing for damages or money due. That very circumstance in itself would appear to me to make it probable that in a very high majority of the cases which would come within that section recovery of the amount claimed would make a significant contribution towards the solvency of the company concerned and a corollary of that is that its insolvency is being probably contributed to, though possibly not entirely caused, by the delay in the payment of the amount alleged to be due.
>
> Having regard to these circumstances, it does not seem to me a sufficient discharge of the onus of proof which I deem to be on a company against whom an application is made under s. 390, to make a mere bald statement of fact that the insolvency of the company has been caused by the wrong the subject-matter of the claim.
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> On the facts of this instant case, in particular, it seems to me that if the plaintiff company were to satisfy even the duty of establishing a *prima facie* special circumstance, it would be necessary for some accounts, even though they might be in an informal form, such as bank accounts or the state of a bank overdraft, of the plaintiff company to be produced. It seems to me that some information would necessarily have to be established as to what other sources of income the plaintiff company had at the material time when this contract was being concluded. Apart from a mere statement that the company was in the course of building houses for the Dublin Council, no concept at all of the extent of that contract or the monies due and owing or capable of being earned on it have been afforded. In the present case it is clear that practically £600,000 was paid on foot of this contract, and the amount in dispute between the parties is just over £40,000. In the case of *S.E.E. Company Ltd. v. Public Lighting Ltd.*, to which I have already referred, McCarthy J. in his judgment refers to compelling evidence that the subject matter of the claim had been the major cause of the collapse of the plaintiff company. In that case, accountants' and auditors' evidence was available, linking the failure of certain equipment in respect of which the claim was being brought against the defendants with the financial collapse of the company. No such evidence is afforded in this case and there does not appear on the evidence before the High Court to be any reason why it could not have been afforded if it was true.
>
> In those circumstances, I am driven to the conclusion that the plaintiff has failed in any reasonable standard of proof of even a *prima facie* special circumstance, such as has been outlined on the authorities, and that the order of the High Court should be set aside and an order for security for costs should be granted to the defendant, the amount to be measured by the Master in the usual way."

14. Relying on the principles set out on pp. 284-285 as quoted above, senior counsel on behalf of the third defendant submitted that there was only a bald assertion by Mrs. Azizi attributing the insolvency of the plaintiff company to the alleged wrongful activity of the third defendant's agent. He submitted that there was a dearth of evidence of accountants or auditors or a failure to produce accounts showing the trading position of the plaintiff company prior to 23rd July, 2003. He submitted that the financial difficulties of the plaintiff company prior to 23rd July, 2003 were not attributable in any way to the agent of the third defendant and indeed that the overdue rent in July, 2003 was confirmatory of the parlous financial difficulties of the plaintiff company. There was a lack of evidence from auditors or accountants, there was no averment indicating that the plaintiff company had sources of income from the third party or other source, nor was there any averment suggesting that the plaintiff company would have been in a solvent state. On the contrary the affidavit of Declan O'Flaherty made it clear that the plaintiff company could not pay a future award of costs and this was confirmed by the affidavit of Mrs. Azizi making clear that the plaintiff company had no assets other than the lease. Counsel for the second defendant supported the submission of senior counsel for the third defendant that on the basis of the principles set out in the O'Toole case, unless the court was persuaded that there were special circumstances not to do so, the court should order security for costs to be given by the plaintiff. He emphasised that the plaintiff had not produced the necessary evidence for the court to find that special circumstances did apply in view of the lack of the establishment of *prima facie* special circumstances, such as the proving by the production of accounts or documents indicating assets held by the plaintiff company, and this despite the second defendant's solicitor having sought particulars and suggesting the furnishing of documents in support. He contended that the plaintiff company had considerable debts prior to 23rd July, 2003, and that the plaintiff company had failed to adduce evidence that the court should not exercise its discretion to make an order for security for costs as no proofs of the special circumstances indicated in the *O'Toole* case had been given.

15. Counsel for the plaintiff indicated that the plaintiff company had expended money on setting up the restaurant premises and that seven weeks after it opened its doors, the agent of the third defendant had invoked a clause in respect of non-payment of rent and re-entered the premises so that the plaintiff had to seek equitable relief and was no longer in occupation of the premises and thus was unable to trade out of financial difficulty. Counsel referred me to *S.E.E. Company Ltd. v. Public Lighting Services Ltd and Petit Jean (UK) Ltd* [1987] ILRM 255. In that case the Supreme Court (Finlay C.J., Hederman and McCarthy J.J.) held that s. 390 of the 1963 Companies Act was not mandatory. The court had a discretion which may be exercised in special circumstances. This case concerned defective light poles at a hockey club in Rathfarnham. In that case the Supreme Court decided that among the circumstances to be considered in the exercise of the court's discretion, the delay of the second named defendant/respondent in

bringing the application was of particular significance. This was coupled with the fact that the inability of the plaintiff/appellant company to pay costs stemmed from the subject matter of the action and there was evidence which tended to show that the insolvency stemmed mainly, if not entirely, from the events the subject matter of the action. This was sufficient to justify a court in refusing to order security for the costs of the appeal. In his judgment at p. 257 McCarthy J. stated that he would prefer to point to the discretionary nature of the court's jurisdiction, a discretion which the court will exercise having regard to all the circumstances of the case to that purpose at page 258 he said that:-

> "The argument that the section of the Companies Act was mandatory was rejected in *Peppard v. Bogoff* [1962] IR 180. The consequent discretionary nature of the order is emphasised when read in the light of the constitutional right of access to the courts, a right not limited to the High Court, and the nature of the right of appeal to this court as provided by Article 34.4.3 of the Constitution."

16. McCarthy J. for the Supreme Court set out some relevant matters to be considered. Under the heading of "The circumstances", two of the suggested relevant circumstances are not in contention in this case, namely that the plaintiff appellant has an arguable case on the appeal and that there has been no undue delay by the party moving for security for costs. A crucial question is whether a *prima facie* case has been made to the effect that the inability identified by the section flows from the wrong allegedly committed by the party seeking security. Counsel for the plaintiff submitted that the taking away of the lease of the restaurant premises from the plaintiff company meant taking away the money-making business. Counsel for the plaintiff also referred me to a judgment of Costello J. in *Campbell Seafoods Ltd and Anor. v. Brodrene Gram A/S* delivered on 21st July, 1994. The defendant sought an order under s. 390 of the Companies Act, 1963, requiring the plaintiffs to give security for the defendant's costs on the ground that the plaintiff companies will be unable to pay the defendant's costs should their defence succeed. The plaintiffs did not deny their inability to pay but claimed that they had a *prima facie* case to the effect that this inability flows from the wrong which they claimed the defendants committed and that because of this the court should exercise its discretion in their favour and refuse to make an order under the section.

17. The plaintiffs claimed that because of the failure of two fish processing machines to reach their contracted capacities, they were unable to meet their contractual commitments to their customers and accordingly suffered severe loss and damage with consequent cash flow problems which resulted in the appointment of a receiver on 27th November, 1986. The defendant claimed that there was evidence that established that these companies were in terminal decline from 1982 and could not recover from the losses in Nigerian and Egyptian markets in 1985. It was submitted on behalf of the plaintiff companies that the evidence showed that it was not the collapse of the Nigerian market that brought the company down but the failure of the defendant's machines to produce the required level of production. There was clearly an available market and another food company had made substantial profits in the first year of production in it. The plaintiff company was brought down due to the failure of the white fish project, a failure brought about by the failure of the defendant's machinery to perform at the promised levels. Costello J. reviewed the evidence and considered the submissions and came to the conclusion that the plaintiffs had made out a *prima facie* case that their admitted inability to pay the defendant's prospective costs resulted from the defendant's alleged wrongdoing. He concluded that, as to the cause for the financial collapse of the plaintiff company, the plaintiffs had made out a *prima facie* case that the machines supplied were defective and that if they had fulfilled their agreed output the company would have survived. He was entitled to take into account the evidence to the effect that the core business of the plaintiffs was sound and that considerable research was undertaken into the profitability of the white fish project and that had the machines not been defective then the new venture would have been profitable and financial collapse would have been avoided. Accordingly, he exercised his discretion in favour of the plaintiff company and refused the application for security for costs.

18. Counsel for the plaintiff submitted that there was a similarity between the inability of the restaurant to trade because of the wrongdoing of the third defendant and the conclusions reached by Costello J. in respect of the detrimental effects of the defective fish processing machines.

Conclusion

19. While both the *Campbell Seafoods Ltd* case and the *S.E.E. Company Ltd* case involving defective appliance or machinery are strong examples of cases in which the courts have refused to make orders for security for costs, it seems to me that both cases involved the adducing of strong positive evidence that the defendants had been the cause of the plaintiff's financial embarrassment. In the one case McCarthy J. said that there was impressive evidence that the failure of South East Electric had been largely if not entirely due to the financial and other problems that arose directly from the hockey club contract for the flood lighting system. In the other case Costello J. held that had the machines for fish processing not been defective then the new venture would have been profitable and financial collapse could have been avoided. In the present application there has been a dearth of evidence to show that the parlous state of the plaintiff company was due to any activity of the defendants. On the contrary there has been common case that the plaintiff company was in a parlous financial state prior to the alleged wrongdoing in respect of the re-entry on 23rd July, 2003. Furthermore, there has been no evidence adduced that the plaintiff company would in fact have been able to trade out of the financial difficulty if not excluded from the premises. Indeed due to the unhappy differences between the third party and the second defendant, whom it was envisaged would manage the first defendant company in running the restaurant, it seems unlikely that the restaurant business of the plaintiff company was likely to flourish.

20. I am concerned that these conclusions as to the absence of necessary evidence, such as accounts proving the viability of the plaintiff company in the event that the third defendant's agent had not effected a re-entry, may affect the plaintiff's access to the High Court on appeal. I am concerned that these conclusions may affect the capacity of the plaintiff company from pursuing its right of appeal to the High Court. I note in *Lismore Homes Limited v. Bank of Ireland Finance Limited* [2001] 3 IR 536 at p. 546 Murphy J. said:-

> "Legislation has conferred many benefits on limited liability companies including, in particular, that very limitation and it is not surprising to find that some burdens are likewise cast by the legislature on companies which enjoy those advantages."

21. Accordingly, I find that the third named defendant and the second named defendant are entitled to an order for security for costs against the plaintiff company pursuant to the provisions of s. 390 of the Companies Act, 1963. On the basis of the Supreme Court decision in the *Lismore Homes Limited* case, it would seem that this security for costs to be given should be sufficient security for the costs of the second and third defendants. Perhaps the parties may be able to agree a figure for security for costs, otherwise it seems that this would fall to be determined by the county registrar with an appeal, if necessary, from the county registrar's findings to the High Court. However, I will hear the submissions of counsel in respect of the actual order to be made.