Neutral Citation Number [2007] IEHC 313

THE HIGH COURT

JUDICIAL REVIEW

[2004 No. 18785 P]

BETWEEN

PORTERRIDGE TRADING LIMITED

PLAINTIFFS

AND

FIRST ACTIVE PLC

DEFENDANT

AND

[2006 No. 1645 P]

BETWEEN

PORTERRIDGE TRADING LIMITED

PLAINTIFFS

AND

BERNARD DUFFY

DEFENDANT

AND

[2003 No. 9018 P]

BETWEEN

MOOREVIEW DEVELOPMENTS LIMITED,
SALTHILL PROPERTIES LIMITED,
VALEBROOK DEVELOPMENTS LIMITED,
SPRINGSIDE PROPERTIES LIMITED, DRAKE S.C. LIMITED,
MALLDRO S.C. LIMITED,
THE POPPINTREE MALL LIMITED, AND
VAN BLONDON PROPERTIES LIMITED

PLAINTIFFS

AND

FIRST ACTIVE PLC AND RAY JACKSON

DEFENDANT

Judgment of Mr. Justice Clarke delivered on the 7th September day of 2007

1. Introduction

1.1 These three actions form part of a series of actions arising out of the collapse of the Cunningham Group of Companies on the appointment of the second named defendant in the third named above proceedings ("Mr. Jackson", "the Mooreview proceedings") as a receiver into a whole series of companies which were in the beneficial ownership of Mr. Brian Cunningham. These interconnected cases were directed to be case managed by me by the President of the High Court. There has, already, been a significant number of hearings some of which have resulted in written judgments. The general issues which arise in the various proceedings can be gleaned from those other judgments and it is unnecessary to repeat them here. See for example *Mooreview Developments and Others v. First Active* [2005] I.E.H.C. 329. At its very simplest Mr. Cunningham and his companies allege wrongful actions on the part of First Active plc ("First Active") and Mr. Jackson concerning the receivership and an alleged failure on the part of First Active to provide agreed support to the companies. Those allegations are strenuously denied. It would also be fair to describe the Mooreview proceedings as the main proceedings.

1.2 It is also necessary to say something about the role of Mr. Duffy.

In the two separate proceedings in which Porterridge Trading ("Porterridge") are plaintiffs, that company (which is again controlled by Mr. Cunningham) seeks to challenge the manner in which a sale took place of certain property at Bailey Point, Salthill Road in Galway. The sale in question was to Mr. Duffy. I had previously formed the view that the issues which arose in those proceedings ("the Porterridge proceedings") were distinct and stand alone and had, therefore, provisionally directed that those proceedings could be brought to trial as soon as possible, independent of the other litigation.

1.3 The current set of applications on which I have to deliver judgment, concern applications to amend each of the three proceedings referred to above. It should be noted that there are other proceedings connected with this process which are under case management but in respect of which no application to amend was considered necessary.

1.4 In order to understand the issues which arise on the amendment applications it is necessary to say something about the procedural history of the cases insofar as it may be relevant to the issues which have now arisen.

2. Procedural History

2.1 As indicated earlier, all of the above proceedings together with the other connected cases, have been under management for some time. The Mooreview proceedings have reached a stage where the pleadings are complete and where discovery has been directed and, so far as a I understand it, to a large extent complied with. There are some outstanding issues as to the adequacy of compliance with the discovery orders concerned, but it can be anticipated that those outstanding matters ought to be capable of resolution in relatively early course. In those circumstances it would be expected that directions for trial might be anticipated during the forthcoming term, in anticipation of a possible trial date some time after Easter next year. It should also be noted that, up to now, I have acceded to an application on behalf of Mr. Cunningham and his interests, which extended a somewhat larger time scale to those parties to comply with procedural obligations, having regard to what was asserted to be an inequality in the resources available to Mr. Cunningham's side in comparison to those available to First Active and to Mr. Jackson.

2.2 As also indicated earlier, the Porterridge proceedings were, it seemed, at an advanced stage of readiness for trial. Amongst other things I have previously ruled that, on the existing pleadings in those proceedings, all issues with the exception of one, were no longer maintainable by Porterridge on the basis of the application of the so called rule in *Henderson v. Henderson*. The reasons for coming to that view are set out in a judgment in the proceedings between *Porterridge v. First Active* [2006] I.E.H.C. 285 delivered on

the 4th October, 2006. Mr. Duffy sought a similar order on the basis of a contention that Porterridge were likewise confined in their proceedings against him. The logic of his position was that he was a purchaser from First Active and that Porterridge could have no larger claim against him, than it did against First Active. Indeed, in the course of arguing in favour of that proposition counsel for Mr. Duffy, correctly in my view, suggested that certain of the claims which were sought to be maintained against Mr. Duffy, amounted to a collateral attack on the receivership.

2.3 I should also note in passing that I had permitted, in the hope that it would expedite matters, some of the issues which emerged in the course of the Porterridge proceedings to be raised by way of Reply rather than by amendment to the original Statement of Claim. In retrospect this was an error. It is perhaps yet another example of the old adage that the longest way around is often the quickest way home.

2.4 In any event the current issues first emerged when Porterridge sought to amend its proceedings against both First Active and Mr. Jackson and the separate proceedings against Mr. Duffy.

2.5 The principle amendment sought involved the inclusion of an allegation that First Active had fraudulently procured the putting in place of certain additional, and it is contended necessary, securities by Mr. Cunningham and his companies on assurances that further facilities would be made available but then proceeded, in early course, to enforce the securities by means of the appointment of Mr. Jackson as receiver and, in the case of the Bailey Point property, purportedly going into possession and selling as a mortgagee in possession. There is little doubt but that the amendment, if allowed, would radically alter the nature of the proceedings. I will turn to the merits or otherwise of allowing that amendment in due course. However, in the course of the argument in respect of that application for amendment it was indicated by counsel on behalf of Porterridge that it was the intention of Mr. Cunningham's advisors to seek to also amend the Mooreview proceedings. The reason why that question arose at all was that the Mooreview proceedings did not contain any allegation (save for one highly tangential reference) of fraud and also did not seek at all to question the formal validity of the appointment of Mr. Jackson as receiver. In that context it seemed initially strange that fraud issues touching upon the validity of the receivership and, indeed, any other enforcement of First Active's security, should be raised in the Porterridge proceedings when they were not raised in the Mooreview proceedings. In reply an indication was given that it was intended to seek to amend the Mooreview proceedings as well.

2.6 When I came to consider the appropriateness or otherwise of allowing the amendment sought in respect of the Porterridge proceedings, I came to the view that there was a significant link between the amendment sought to the Porterridge proceedings on the one hand and the intended application to amend the Mooreview proceedings on the other hand. In those circumstances I directed that, if it was intended to apply to amend the Mooreview proceedings, an application in that regard should immediately be brought. This was, in fact, done. It would be fair to say that the amendments sought to the Mooreview proceedings can be classified into two categories. Firstly, there are amendments which seek to raise the same alleged fraudulent activity as formed the basis of the proposed amendment to the Porterridge proceedings and which further seeks additional relief based on those and other existing allegations. In addition there are separate amendments that seem to involve seeking to plead additional representations, warranties and terms and breaches of same which do not in any way seem to be connected with the allegation of fraud.

2.7 I should finally note that in the amendment application in relation to the Mooreview proceedings, it is also sought to have Mr. Duffy joined in those proceedings for it would appear, two purposes. Firstly, it is said, correctly so far as it goes, that if the validity of the security is successfully challenged then that will necessarily have an effect on Mr. Duffy in that the sale by First Active to Mr. Duffy is in its capacity as mortgagee in possession on foot of that security. If that were the only issue involving Mr. Duffy then, while he would be an appropriate party to the proceedings, it seems unlikely that his presence would be necessary (though he would be entitled to participate) in that he would have nothing to add to the question of whether the security was valid or not and would, in effect, have to abide by the result of the litigation between Mooreview and First Active.

2.8 However an additional contention is made which concerns the manner in which the sale to Mr. Duffy was affected and involves, in substance, a contention that he was given preferential treatment to the detriment of the mortgagor. That issue would, necessarily, involve Mr. Duffy directly in the Mooreview proceedings if only in respect of one fairly discrete part of it.

2.9 Finally I should note that it appeared to be accepted by counsel for Porterridge, in the course of argument in the Porterridge application, that the multiplicity of proceedings which are now before the courts arising out of these issues are, perhaps, unnecessary. The issue arose in the context of a question which is of some relevance to these amendments. It concerns the manner in which it now appears appropriate to try all of the various issues that arise in the multiplicity of proceedings. The question of whether all of the proceedings ought now be heard together, or at least in an appropriate sequence one after another, has a bearing on the extent to which any prejudice might be caused by the amendments sought and it is, therefore, an issue which I will also have to address.

2.10 As against that background I turn briefly to the legal principles involved in an application to amend such as this, although it is fair to say those principles were not the subject of any significant controversy between the parties.

3. The Law

3.1 The most recent authoritive statement of the law in relation to amendment of pleadings is to be found in *Croke v. Waterford Crystal* [2005] 2 I.R. 382. I applied the reasoning to be found in *Croke* in *Woori Bank and Another v. K.D. Ireland Limited* [2006] I.E.H.C 156. For the reasons set out in that latter judgment, I determined that an amendment should, ordinarily, be allowed unless it would cause prejudice to the other side, subject to the limitation that an amendment ought not to be allowed if the aspect of the case which would then proceed by virtue of the amendment was bound to fail. As set out in the judgment in *Woori Bank* the reasoning behind that view stems from the fact that, subject to the proceedings being frivolous or vexatious or being bound to fail, a party has, in most cases, an entitlement to plead the proceedings in whatever way it wishes. In those circumstances no leave of court is required. Subject only, therefore, to prejudice, it is difficult to see why a party who could have pleaded the case in the manner now sought to be achieved by amendment, should not be entitled to bring about such a situation by virtue of an amendment without the court engaging in significant scrutiny as to the merits of the case which, if the amendment be allowed, would now require to be litigated. It is also worth noting that the comments which I made in *Woori Bank* concerning prejudice, were subject to the qualification that where any prejudice arising could be otherwise dealt with (for example by an appropriate order as to costs) in a manner which was just to all parties, then such prejudice should not debar an amendment but should lead to other measures designed to mitigate or minimise the prejudice concerned.

3.2 It is also of interest that O'Sullivan J. appears to have come to a similar conclusion in *Cornhill and Others v. The Minister for Agriculture and Food and Others* (Unreported, High Court, O'Sullivan J., 13th March, 1998) where, at page 9, he said the following:-

> "Having listened to the careful submissions of counsel, my view is that an amendment to the pleadings should be allowed

if it would have been appropriate in the original pleadings, would have withstood an attack under O. 19, r. 28 and provided no injustice (in the sense contemplated by the authorities) is thereby done to the opposing party."

3.3 Only one issue of substantive dispute as to the legal principles emerged in the course of the argument of the various applications under consideration. It is correct to state that Geoghegan J., in *Croke*, suggested that there had been an over emphasis on analysing the explanation given by the party seeking the amendment for the proposed amendments not having been included in the first place. Counsel for First Active drew attention to the fact that *Croke* is not authority for the proposition that an explanation is not needed at all or that the adequacy of the explanation is entirely irrelevant. I am satisfied that counsel for First Active is correct in that proposition. There will, in almost all cases, be some degree of prejudice resulting from any amendment which occurs at any significant time after the original pleading is delivered. The parties will have conducted preparation for the litigation on the basis of the case as then pleaded and it follows that some additional element of effort and expense will, even in the simplest of cases, inevitably result from an alteration in the course of the proceedings. To the extent that extra legal costs are incurred then the court can deal with same by making an appropriate order as to such costs.

3.4 However, there will always be an effect on the party itself which will not give rise to formal legal costs and which will not, therefore, be capable of being compensated. The extent of any such effect is part of the balancing exercise that needs to be taken into account. Set against such considerations will also be the extent to which there is any reasonable basis for the failure to plead the case properly in the first place. That is not to suggest that it is an issue upon which any great weight ought to be placed, save where there is a fine balance involved in assessing the competing interests of justice arising. In substance if it is clear that the amendment is necessary to allow the true issues between the parties to be determined and if there is no prejudice which is not capable of being substantially met by appropriate orders or directions in the proceedings, then the amendment should ordinarily be allowed.

3.5 Before going on to deal with the application of those principles to the facts of this case it is also necessary to touch on one further issue of law which arises. The stated basis for the intention on the part of the various plaintiffs to seek the core amendments in each of the three cases (that is to say the amendments which now plead fraud and its consequences) stems from certain documentation that was obtained as part of the discovery process. That documentation was, of course, obtained in discovery in the Mooreview proceedings as presently constituted. In those circumstances it is said that it is a breach of the implied undertaking which follows from the disclosure of that documentation in the Mooreview proceedings to the effect that same should not be used for the purposes of any other proceedings.

3.6 I had occasion to review the position in respect of such implied undertakings in *Cork Plastics and Others v. Ineos Compounds UK Limited and Another* (Unreported, High Court, Clarke J., 26th July, 2007). As is clear from that judgment, and the authorities referred to in it, a party obtaining documents on discovery is taken to be subject to an implied undertaking not to use the documents concerned other than for the purposes of the relevant litigation. As is, however, also clear from that judgment, a court having carriage of subsequent proceedings is entitled to release the party concerned from the undertaking, where it is clear that the interest of justice require that the documents be available for consideration in the second proceedings. This will be so even where the second proceedings do not involve the same parties, though it will be necessary in any application for release in the second proceedings to give a party who may be able to assert the confidentiality of the documentation concerned, an opportunity to be heard.

3.7 It was accepted by counsel on behalf of Porterridge that the court should first have been moved to allow for the release of the plaintiffs in the Mooreview proceedings from their undertaking, so that the documentation could be utilised in the application to amend in Porterridge. However, it seems to me to be manifestly clear that the relevant release would have been granted had it been asked for. It is common place that applications are made to amend proceedings on the basis of material discovered in the course of the orderly conduct of the case as originally pleaded. It has never been suggested that a party who discovers that he may have an additional or different cause of action arising out of the same general circumstances, is precluded by the undertaking in respect of discovered documents from relying on those documents to assert the additional claim in the same proceedings. While, as a matter of form, there are a series of different cases involved in the matters before me, all proceedings have been linked and there is no reason in substance why all of the issues could not have been raised in the same set of proceedings. While it is true to state, therefore, that an application should have been made in advance for the release of the documents concerned, I do not propose debarring Porterridge from placing reliance on those documents because it is manifestly clear to me that the release sought would have been granted.

3.8 It is now necessary to turn to the issues raised in respect of the amendments.

4. Application to facts of Case

4.1 I propose dealing first with those amendments which arise in all three proceedings and which derive from the allegation now made to the effect that the execution of certain securities in favour of First Active was procured by fraud. It is important to note that the events which gave rise to these proceedings occurred substantially in 2003. Any issues arising from those events are not, therefore, statute barred. It is, of course, the case that different considerations may well apply when considering whether to permit an amendment of pleadings which would have the effect of allowing a significantly different claim to be pursued which claim would, if independently commenced at the relevant time, be statute barred. No such considerations apply in this case. It is, therefore, the case that there would, *prima facie*, be no reason why separate proceedings could not now be commenced seeking to raise the issues sought to be included by way of amendment. Subject only to the possibility that it might be said that a second set of proceedings would, arguably, be debarred by virtue of the principle in *Henderson v. Henderson*, it is difficult to see how any argument could be raised against such issues being agitated in a second set of proceedings.

4.3 First Active strenuously denies that the documentation which is relied upon on behalf of Mooreview and Porterridge to suggest that there is an arguable case for the fraud contended for is, properly speaking, capable of bearing the interpretation sought to be placed on it. As this is an issue which may go to trial, it would be wholly inappropriate for me to make any comments on the merits or strength of the argument concerned. For the reasons which I set out in *Woori Bank*, I am satisfied that the proper test is equivalent to the test which would be applied had the amendment been included in the original proceedings and had the defendants sought to have that aspect of the pleading struck out as being bound to fail. I have come to the view, having reviewed the evidence, that I could not reach a conclusion to such an effect at this stage. In those circumstances it does not appear to me that I could conclude that the amended aspect of the case (if the amendment is to be allowed) would be bound to fail.

4.4 In coming to that view I have had regard to the submissions made by counsel for First Active as a commentary on what transpired in *3 Rivers D.C. v. Bank of England* [2003] 2 A.C. 1. In that case the United Kingdom courts allowed an amendment to plead significant wrong doing against the Bank of England. The case at trial collapsed in circumstances where the court was highly critical of the legal advisors of the plaintiff for pursuing the issues raised. Counsel for First Active commented that the court which allowed the amendment might well, in those circumstances, have regretted its action. I am afraid I cannot agree. That view is based on hindsight. It is equally possible that a set of proceedings which required no amendment, and which progressed in the ordinary way,

would collapse in exactly the same fashion. The mere fact that, at the end of the day, a case is found to have no substance, is not really a question which should influence whether the court should have entertained the case in the first place. A court should always entertain proceedings put forward by any party unless it is clear that the proceedings are vexatious, frivolous or bound to fail. That question must be judged at the time when any relevant application is heard and not, with the benefit of hindsight, when the proceedings have, after trial, been found to be wholly unmeritorious. The same applies in the case of an amendment. Of course if it were clear to the court which had to deal with the application for an amendment in *3 Rivers* that the issues sought to be raised by virtue of the amendment were bound to fail, then the amendment would not have been allowed. It, obviously, was not clear at that stage that those issues were bound to fail and the amendment was, quite properly, therefore, allowed. The fact that, at trial, the issues were found to be wholly without merit does not alter the fact that the amendment was properly allowed.

4.5 I am not, therefore, satisfied that there are any special reasons for refusing the amendments in each of the three proceedings which seek to introduce the claims based on fraud. The allowance or otherwise of the amendments depends, therefore, on a consideration of prejudice. The prejudice which is put forward is of the type of which I described in *Woori Bank* as logistical prejudice i.e. the fact that the amendment is sought at a stage in the proceedings where the fact of the amendment is likely to have a significant effect of the trial date and having regard to any questions concerning the urgency of the proceedings.

4.6 I accept that this is a significant matter. There is no doubt that, to date, First Active has had hanging over it significant proceedings in which very substantial sums indeed are being claimed. If the amendments are allowed it will, in addition, have a serious accusation of fraud pending before the courts which it, as a licensed financial institution, is entitled to have dealt with as quickly as possible. Any significant delay in the likely trial date by virtue of the amendment sought would, therefore, amount to a prejudice which would need to be properly taken into account.

4.7 However, I have come to the view that it will be possible, by virtue of measures which I intend to address and put in place as soon as practicable, to ensure that any delay in the likely trial date will be minimal. I am, therefore, satisfied that the amendments relating to the allegation of fraud in all three proceedings and any consequential matters should be allowed on the basis that any potential prejudice can be met by appropriate measures.

4.8 Somewhat different considerations apply in relation to those amendments which do not directly relate to the fraud allegation. There is, of course, a reason why the fraud allegation is only now being raised in any substantial way. If there be any merit in that aspect of the case it seems to stem from the documents discovered and there is, therefore, a reasonable basis for suggesting that the claim, in any significant detail, could only have been formulated in recent times. However it is correctly stated by counsel on behalf of First Active that it is difficult to see how most of the other amendments, if they had any merit, could not have been pleaded at the time when these proceedings were originally commenced. It should also, in that context, be noted that the pleadings have, already, been the subject of significant amendment in all of the relevant proceedings. The application in the Mooreview proceedings is to re-amend the statement of claim. As pointed out earlier the plaintiffs in the Porterridge proceedings had been, in substance, allowed to alter their case by including much additional matter in the reply. It is also fair to state, as was again pointed out by counsel for First Active, that no real explanation has been given for why the matters now sought to be included (outside of the fraud allegation) were not included in the original pleadings. Similar points were made on behalf of Mr. Duffy. Notwithstanding this, it does not seem to me that any real prejudice would be caused by allowing the amendments concerned at this stage. I am hopeful that the measures which I intend putting place will ensure that no significant delay will occur in the cases as a whole coming on for trial. This will apply, but perhaps not to the same extent, even in the case of Mr. Duffy. To the extent that it can appropriately be suggested that matters now claimed as having been the subject of warranties and the like, ought, if such warranties had really been given, have been known to the plaintiffs when the case was original pleaded, then such matters can, of course, be pursued on that very basis in cross examination. It does not seem to me that the issues now sought to be raised would have any real additional consequences on the length, duration or course of the trial of the various actions. I am, therefore, persuaded that it is appropriate to allow all of the amendments sought. That general view is, however, subject to two caveats.

4.9 It has to be said that the manner in which the proposed amendments were presented in respect of the Mooreview proceedings was a lot less than satisfactory. It would appear that a wrong copy of the proposed reamended Statement of Claim was supplied to the defendants with the proper copy only being produced in court on the day of the hearing in question. I should emphasis that it is my intention, as will be apparent from the measures which I intend to outline shortly, to ensure that there is strict compliance with all procedural requirements in the future. Errors, such as that which took place, will no longer be readily overlooked. Be that as it may it is important that there be absolute clarity as to what the pleadings, going forward, now are. With that in mind I propose directing that the plaintiffs in the Mooreview proceedings supply each of the defendants (including, now, Mr. Duffy) with a copy of what they now say is the definitive Statement of Claim. If there is any dispute about that document I would wish to have it resolved at the next case management meeting to which I will refer in early course.

4.10 In addition it is clear that counsel for Mr. Jackson was prejudiced, in particular, by the manner in which certain of the amendments proposed were omitted in the copies supplied to him. On the basis of the proposed amendments which were furnished to him in advance of the hearing, counsel reached the reasonable conclusion that the amendment sought had very little to do with Mr. Jackson directly and did not, therefore, propose taking any significant part in the application. Some of the omitted amendments do effect Mr. Jackson's interests directly and I indicated, on the occasion of the hearing, that Mr. Jackson should have an opportunity, when this judgment had been delivered, and he had the opportunity to consider it in consultation with his advisors, to adopt whatever position he might consider appropriate in relation to those amendments. The relevant amendments should not, therefore, be regarded as having been permitted unless either Mr. Jackson agrees to them or I direct at the next case management meeting, having heard all relevant parties, that they should be included.

4.11 Before leaving the question of the pleadings I should also indicate that it seems to me that the conduct of this litigation will require some rationalisation of the particulars. Whether or not further particulars arise from the amendments which I have now permitted or, indeed, from any amended defences or other pleadings arising therefrom, the state of the particulars has the potential to confuse rather than clarify not least because of the number editions through which the pleadings will now have gone. In those circumstances I would invite the solicitors for all sides to attempt to produce a set of rationalised particulars which will group in a convenient way the particulars relevant to the pleadings as they will now be found, in a manner that will allow those particulars, when read in the context of the pleadings as they now are, to make sense. This is again an issue which, it seems to me, will need to be dealt with at the case management meeting to which I will now refer.

4.12 The measures which I intend to put in place are as follows:

> 1. The various plaintiffs must accept that the belated amendment of these proceedings has the potential to affect the trial date in circumstances where there will now be pending against First Active, the most serious of accusations. The amendments are, therefore, allowed on the strict understanding that any leeway which has heretofore been given to the

plaintiffs generally in respect of time for compliance with various procedural obligations can no longer be afforded. There will have to be strict compliance with all timescales fixed in the future and those timescales will not reflect any allowance based on the contented for lack of resources available to the plaintiffs.

2. The plaintiffs will be required, within two weeks from today's date, to raise any further categories of discovery which they contend ought now be allowed, in addition to the discovery already directed, by virtue of the amendments permitted. I would emphasis that time is of the essence in respect of that timescale. The balance of justice only favours allowing the amendments if there is not likely to be a significant delay in the trial date. That can only be achieved if there is strict compliance by the plaintiffs with time scales imposed. Any discovery not sought within the period which I have indicated will not be entertained and the plaintiffs will have to do the best they can on the basis of the existing discovery. In addition I am anxious that any issues arising out of such additional discovery, if any (and hopefully there will not be any) will be brought to a point where they can be determined at a case management hearing to be fixed for the middle or latter part of October.

3. In addition the plaintiffs will be required to submit to the defendants within the same timeframe (i.e. two weeks) a list of all outstanding interlocutory issues in all proceedings which they perceive remain unresolved. On foot of that list, and any additional issues which any of the defendants consider remain also outstanding, I would envisage attempting to resolve all interlocutory issues at the case management meeting to which I have referred.

4. I do not, at this stage, propose specifying a specific timeframe within which the defendants should file any amended pleadings which they may require but would note that any undue delay in progressing such matters (and indeed any other issues, such as further discovery, which they might wish to raise) might lead to a delay in the likely commencement date of the proceedings which could not be blamed on the plaintiffs.

5. In the light of the amendments which I have allowed, it seems to me that all of the proceedings now under case management are sufficiently connected such that all should be tried in a single sequence. With that in mind I direct that within three weeks from today's date the plaintiffs should submit to the defendant solicitors a list of all of the issues which are said to arise in all of the proceedings. It would be nice to think that agreement could be reached on those issues but having regard to the protracted period which it took in attempting to agree the facts upon which the Porterridge proceedings might have proceeded in their existing form, I do not propose directing the parties to seek to reach agreement, while expressing the view that it would be helpful if they could. The defendants in all of the proceedings should respond within a further period of two weeks with any additional issues which they say arise on the pleadings. On the basis of that documentation I propose considering the totality of the issues which arise and, having heard the parties, propose fixing the order in which the issues will be tried.

6. I am particularly mindful in that context of the fact that Mr. Duffy is only involved in a small number of discrete aspects of the proceedings and, indeed, in respect of some of them may well be happy to abide the order of the court. I am anxious that Mr. Duffy should not be required to be involved in the case in relation to any issues which do not affect him. Likewise, although to a significantly lesser extent, some of the issues do not appear to relate to Mr. Jackson personally though they obviously have the capacity to effect the validity of his appointment. I am anxious that the structuring of the hearing should be such as does not require Mr. Jackson to be unnecessary involved in issues in which he has no direct involvement.

4.13 Having defined the issues for trial, and the sequence in which same are to be heard, I propose that there will be a further case management hearing in the latter part of Michaelmas Term which would be for the purposes of:-

(a) Ensuring that any final orders made at the previous case management meeting in relation to interlocutory matters have been complied with; and

(b) Giving pre-trial directions which, I would envisage, would be similar to those normally given by the Commercial Court in relation to the exchange of witness statements, the preparation of books and documents and the like.

In this latter regard I would comment that, in recent times, the concept of a book of "core" documents has become something of a misnomer. I am afraid there have been cases where the "core" documents ran to four or five banker's boxes. I would invite the parties to give consideration to whether it may be possible to produce a small number of documents which are likely to be at the centre of the proceedings and, thus, be required to be referred to on a regular basis. That is not to say that the parties may not wish to have a more significant volume of documentation available in an orderly form in court, in case it might need to be referred to.

4.14 Last, but by no means least, I propose provisionally fixing Tuesday 8th April, 2008, as the date on which the trial of all proceedings in whatever order may be determined in accordance with the process which I have outlined, will commence. Any procedural orders or directions will be crafted in a fashion designed to ensure that an appropriate timescale, so as to allow for the proceedings to commence on that date, can be maintained.

4.15 I propose hearing counsel further on the precise order as to costs which I should make. I would envisage that counsel would wish to have an opportunity to consider this judgment before addressing me specifically on costs. However, I should indicate that it seems to me that any additional costs whether of pleadings, discovery, or otherwise which can be said to flow from the amendments, should be allowed to the appropriate defendants. At the October case management meeting I will entertain an application from those defendants for such costs, as they feel they may be entitled to but would direct that they should write to the plaintiff's solicitors at least two weeks prior to such date, specifying the precise order as to costs which they will be seeking.