THE HIGH COURT

COMMERCIAL

[2012 No. 3956 P]

[2012 85 COM]

BETWEEN

MAVIOR

PLAINTIFF

AND

ZERKO LIMITED

DEFENDANT

JUDGMENT of Ms. Justice Finlay Geoghegan delivered on the 22nd day of November, 2012

1. The defendant in the motion sought an order that the plaintiff give security for costs pursuant to s. 390 of the Companies Act 1963 (as amended), or, in the alternative, pursuant to O. 29 of the Rules of the Superior Courts.

2. The plaintiff is an unlimited company registered in Ireland and with a registered address in Dublin. The plaintiff, formerly a limited company, Mountbrook Homes Limited, changed its name and was re-registered as an unlimited company prior to the events giving rise to these proceedings.

3. The defendant, a limited company, is stated to be a "Special Purpose Vehicle", established by Ulster Bank Ireland Ltd. for the purpose of holding the legal and beneficial interest in the Ballsbridge Inns and Tower Hotels (the "Hotels") on behalf of Ulster Bank Ireland Ltd., in its capacity as facility agent and security trustee for a syndicate of banks.

4. The factual background to the plaintiff's claim in these proceedings and the defendant's application for costs, in summary, is as follows.

5. In 2011, MJBCH Limited, a company stated to be part of a group of companies controlled by Mr. Sean Dunne, was engaged in running and managing the Hotels pursuant to an agreement with the defendant. On 24th October, 2011, the Hotels were flooded as a result of heavy rainfall and extensive damage was done to the hotel buildings and their contents. The plaintiff pleads that following the flood damage, it was agreed between the defendant and MJBCH Ltd. that the latter would organise repair and reinstatement works to be carried out so as to render the hotel buildings safe and minimise the disruption to the Hotels. It further pleads and contends that MJBCH Ltd., acting at all material times as an agent of the defendant, entered into a building agreement with the plaintiff pursuant to which it was agreed that the plaintiff would carry out the necessary repair and reinstatement works.

6. The plaintiff contends that it carried out the repair and reinstatement work pursuant to the alleged agreement; that the defendant made to it three separate payments in respect of such works and that there is a balance in excess of €1m now due and owing, certified by the architects as due in respect of the works. In the alternative, it claims monies due to it by the defendant for the works carried out at its request on a *quantum meruit* basis.

7. The defendant disputes the terms of the alleged contracts, both between it and MJBCH Ltd. and the existence of any contract between it and the plaintiff. The defendant does not dispute that the plaintiff carried out works on the Hotels from which it now benefits; further, it does not dispute that it paid the plaintiff monies for work done. The defendant alleges that the works carried out by the plaintiff were substandard and denies that it now owes any monies to the plaintiff.

8. The defendant brings the application for security for costs upon the basis that it has a *bona fide* defence to the plaintiff's claim, and that, as a matter of probability, the plaintiff would be unable to meet an order for costs of the proceedings if the defendant were to be successful. The defendant obtained advice from Cyril O'Neill & Company, legal costs accountants, that the cost of defending the plaintiff's claim is likely to be in the order of €500,000 to €600,000 plus VAT.

9. On the affidavits in this application, there is dispute as to certain of the facts relating to the solvency of the plaintiff and its ability to meet any award of costs in favour of the defendant. Since its conversion from a limited to an unlimited company on 9th June, 2009, it has not been under a statutory obligation to file accounts or make public its financial statements. The defendant exhibits the last set of filed financial statements for the year ended 31st October, 2007, showing a loss on the profit and loss account of €453,859.00. The defendant also refers to other facts including the appointment of a receiver to part of the plaintiff's properties, registered charges and the behaviour of the plaintiff in relation to the ownership of fixtures and fittings in the Hotels arising out of prior commercial dealings between the plaintiff and the defendant.

10. The plaintiff, through a series of companies, some of which are non-resident, is stated to be ultimately owned by Ms. Gayle Killilea, the wife of Mr. Sean Dunne. Ms. Killilea and Mr. Ross Connolly are the two directors of the plaintiff.

Issues

11. The defendant did not pursue its application under s. 390 of the Companies Act 1963 for an order for security for costs. It only pursued the application pursuant to O. 29 of the Rules of the Superior Courts and the inherent jurisdiction of the court. It accepts that the plaintiff is to be treated as a person resident in this jurisdiction for the purposes of the application. It contends that the plaintiff is insolvent, or, as alternatively put, as a matter of probability would be unable to meet an order for costs against it if the defendant were successful. Counsel on its behalf invite me to follow the decision of Cooke J. in *Goode Concrete v. CRH plc. & Ors*.

[2012] IEHC 116, and decide that there is jurisdiction to order security be given by the plaintiff, an unlimited company resident in the jurisdiction. It contends that insofar as that judgment differs from the judgment of Laffoy J. in *ABM Construction v. Habbingley Ltd.* [2012] IEHC 61, it is to be preferred. It also contends that the plaintiff should be considered as bringing these proceedings as a nominal plaintiff for the purpose of the jurisdiction on security for costs, in the sense used in the law referred to and applied by Cooke J. in his judgment in *Goode Concrete*.

12. The plaintiff submits that this Court does not have jurisdiction to make an order against it for security for costs simply on the basis that it is insolvent, or is likely to be unable to meet the costs of the defendant if it were successful in its defence, as it is resident in the jurisdiction. It invites me to follow the analysis of Laffoy J. in *ABM Construction* and that of Clarke J. in *Salthill Properties Ltd. & Another v. Royal Bank of Scotland plc. & Ors*. [2010] IEHC 31 [2011] 2 I.R. 441. Insofar as the Court may have jurisdiction to make an order for security for costs against a resident plaintiff who is acting as a nominal plaintiff, it contends that it is not bringing these proceedings as a nominal plaintiff in the sense used either by Cooke J. in *Goode Concrete* or the decisions referred to therein.

The Law

13. Both parties are in agreement that s. 390 of the Companies Act 1963, does not apply to the plaintiff as it is an unlimited company. Section 390 provides:

> "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."

It is, nevertheless, relevant to a consideration of the High Court's general jurisdiction in relation to security for costs, either pursuant to O. 29 or the Court's inherent jurisdiction. The Companies Act 1963 applies to and regulates both limited and unlimited companies. The Oireachtas, in enacting s. 390, has included a special provision in relation to limited companies only. I will return to this.

14. The parties presented the judgments in *ABM Construction and Goode Concrete* as conflicting judgments of the High Court. On careful analysis, it does not appear to me that there is a straight conflict. The underlying facts were considered by the respective judges to be quite different and a distinct line of authority is considered and relied upon in *Goode Concrete* which does not appear to have been drawn to the attention of the Court in *ABM Construction* as it did not arise on the facts. It is of relevance to note that the judgment in *ABM Construction* was given approximately three weeks prior to that in *Goode Concrete* and it would appear that it was not drawn to the attention of Cooke J. before delivering his judgment. He may have reserved his decision at a date prior to its delivery.

15. In *ABM Construction*, the application was for an order pursuant to s. 22 of the Arbitration Act 1954, directing ABM Construction to furnish security for costs to the respondent therein. Pursuant to s. 22 of the Act of 1954, the Court has the same power of making an order in respect of security for costs as it has for the purpose of, or in relation to, an action or matter in the Court. ABM Construction was an unlimited company, having re-registered prior to the relevant events. It was a building company which had been contracted by the respondent to carry out construction work. The claim in the arbitration was pursuant to a contract based on the standard RIAI Articles of Agreement. The factual basis of the respondent's application for security for costs was that the claimant would be unable to meet an order for costs if the respondent were successful in the arbitration. The claimant contended that the Court had no jurisdiction to make an order for security for costs against it as it was an unlimited company (to which s. 390 of the Act of 1963 did not apply) and resident in the State.

16. Order 29 of the Rules of the Superior Courts, insofar as relevant, provides:

> "1. When a party shall require security for costs from another party, he shall be at liberty to apply by notice to the party for such security; and in case the latter shall not, within forty-eight hours after service thereof, undertake by notice to comply therewith, the party requiring the security shall be at liberty to apply to the Court for an order that the said party do furnish such security.
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> 2. A defendant shall not be entitled to an order for security for costs solely on the ground that the plaintiff resides in Northern Ireland.
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> 3. No defendant shall be entitled to an order for security for costs by reason of any plaintiff being resident out of the jurisdiction of the Court, unless upon a satisfactory affidavit that such defendant has a defence upon the merits.
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> 4. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs though he may be temporarily resident within the jurisdiction.
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> 5. If a person brings an action for the recovery of land after a prior action for the recovery of the same has been brought by such person or by any person through or under whom he claims, against the same defendant, or against any person through or under whom he defends, the Court may at any time order that the plaintiff shall give to the defendant security for the defendant's costs, whether the prior action has been disposed of by discontinuance or by non-suit or by judgment for the defendant."

17. Laffoy J., in her judgment in *ABM Construction*, having set out O. 29, rules 1 to 4, then cited with approval a passage from Keane J. in the High Court in *Pitt v. Bolger* [1996] 1 I.R. 108 at p. 114:

> "As to the general nature of the jurisdiction exercised by this Court under O.29, the language of the Order, as noted by Murphy J. in *Proetta v. Neil* [1996]1 I.R. 100 assumes the existence of an existing practice rather than defining it in precise terms. The nature of the jurisdiction was, however, explained by Finlay P. in Collins v. Doyle [1982] I.L.R.M. 495 in a judgment which was subsequently approved of by the Supreme Court in Fares v. Wiley [1994] 2 I.R. 379. In *Collins v. Doyle*, Finlay P., having pointed out that prima facie a defendant establishing a *prima facie* defence to a claim made by a plaintiff residing outside the jurisdiction is entitled to an order for security for costs but that this was not an absolute right, went on to say that amongst the matters to which a court might have regard in exercising its discretion against ordering security was a *prima facie* case by the plaintiff to the effect that his inability to give security flows from the wrong committed by the defendant. He went on:-
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> 'In general it would appear to me that the principle underlying a defendant's right to security for costs must be that he

should not suffer from an inability to recover the cost of successfully defending the claim arising from the fact that the unsuccessful plaintiff resides and has his assets outside the jurisdiction of the court'."

18. As is pointed out by Laffoy J., subsequent to those decisions, it has, in accordance with EU law, been construed as applying to persons resident outside of the European Union. That qualification is not relevant to any issue herein.

19. Laffoy J. then considered the potential inherent jurisdiction of the Court to make an order against the claimant as an unlimited company resident in this jurisdiction. She referred to the fact that the Oireachtas, in s. 390 of the Companies Act 1963, had applied a special rule for limited companies; the nature of the Court's inherent jurisdiction as explained by Murray J. in *G.McG v. D.W. (No. 2) (Joinder of Attorney General)* [2000] 4 I.R. 1, and the observations of Clarke J. in *Salthill Properties Ltd. and Brian Cunningham v. Royal Bank of Scotland plc. & Ors.* [2010] IEHC 31, [2011] 2 I.R. at p.454, para. 34, where, having considered a potential expansion of what he perceived as the current rule confining the making of an order to a plaintiff resident outside of this jurisdiction or the Brussels Regulation countries, he stated:

> "Such an expansion would, in my view, if desirable, be properly brought about by a change in the rules or legislative intervention. To embark on what would be a radical change in the relevant law on the basis of judicial decision would be going too far."

20. The conclusion of Laffoy J. in *ABM Construction is* that the Court does not have jurisdiction pursuant to O. 29 or its inherent jurisdiction to make an order for security for costs against an unlimited company. However, whilst her judgment is expressed in those general terms, it must be considered and understood in the context that the only basis upon which the order was sought was that the claimant, ABM Construction, was, as a matter of probability, unable to meet the costs of the respondent if successful in the arbitration. In the terminology of certain of the decisions considered by Cooke J. in *Goode Concrete*, the order was sought on the basis of the insolvency or poverty of the plaintiff alone and no other basis. In particular, no submission appears to have been made in *ABM Construction* that the Court had, as part of its inherent jurisdiction, a jurisdiction to make an order for security for costs against a plaintiff resident in the jurisdiction for the purposes of preventing an abuse of process, or on the basis that the plaintiff was bringing the claim as a nominal plaintiff.

21. In *Goode Concrete*, the plaintiff was also an unlimited company incorporated in the State. It does not appear to have been in dispute that it was resident in the State. Its claim against the defendant is for infringements of sections 4 and 5 of the Competition Act 2002 (as amended), and Articles 101 and 103 of the Treaty on the functioning of the European Union. The plaintiff claims that at the relevant periods (2007 to 2010), it was engaged in the manufacture, sale and distribution of ready-mix concrete, concrete blocks, sand, gravel and quarrying products. The plaintiff ceased trading on 18th February, 2011. A receiver was appointed to certain of its assets and it was not in dispute on the application for security of costs that it was insolvent. However the plaintiff claimed that it was forced out of business by the illegal activities of the defendants, the subject matter of the proceedings. On the application, it contended that the Court had no jurisdiction, either pursuant to s. 390 of the 1963 Act, or pursuant to O. 29 of the Rules of the Superior Courts or the inherent jurisdiction of the courts to make an order for security for costs against it as a resident unlimited company.

22. Cooke J., in his judgment at para. 15, determined that s. 390 of the Companies Act 1963, did not apply to an unlimited company. He stated:

> "The meaning and purpose of s. 390 admits no lack of clarity or ambiguity. It is directed, as already mentioned, at the mischief of the abuse of limited liability. It was not an oversight on the part of the Oireachtas that entities other than limited companies were omitted. To interpret the section by reference to its plain words and obvious meaning does not therefore frustrate the intended effect or purpose of the provision."

23. The starting point of Cooke J.'s consideration of the Court's jurisdiction under O. 29 was also the decisions of Murphy J. in *Proetta v. Neil* [1996] 1 I.R. 100, and Keane J. in *Pitt v. Bolger* [1996] 1 I.R. 100, and the decisions referred to therein. He emphasised the existing practice and what, in his view, appeared to be an assumption that the court's jurisdiction under O. 29 related to persons outside of the jurisdiction. At para. 21, he stated:

> "Thus, the assumption is recognised as part of the existing practice but there does not appear to have been any explicit finding that the Order is applicable to non-resident plaintiffs alone. Moreover, as explained below, there appears to have been at least one category of cases in which it has been held that Order 29 or its predecessors did permit such orders to be made against parties resident within the jurisdiction."

24. Cooke J. at para. 23 of his judgment analysed the evolution of O. 29 from its statutory origin in s. 52 of the Common Law Procedure Amendment Act (Ireland) 1853. Having referred to the Supreme Court of Judicature Act (Ireland) 1877, O. LV, the Rules of the Supreme Court (Ireland) 1891, O. XXIX, the Supreme Court (Ireland) Rules 1905 O.xxix, and the 1926, High Court and Supreme Court Rules, Cooke J. concluded at paras. 28 to 31:

> "28. On the face of it, therefore, an exclusion from the jurisdiction of the courts of the competence to require security to be given by a resident plaintiff does not appear to have been a permanent or necessary characteristic of the rules at any time. Nor does the present Order 29 according to its wording, exclude from the jurisdiction of the Court the making of an order for security against a plaintiff ordinarily resident within the jurisdiction. It is true, of course, that it has always been a principle of court practice that the poverty or insolvency of a plaintiff who is resident within the jurisdiction is not a ground for the grant of such an order. (See, for example, *Stead v. Williams* (1848) 5 C.B.528 [sic]; *Kenealy v. Keane* [1901] 2 I.R. 640; *Cook v. Whellock* (1890) 24 Q.B.D. 658). [Emphasis added]
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> 29. Rules 2, and 3 of the Order therefore, define particular conditions applying to orders for security for costs against a plaintiff who is outside the jurisdiction. Residence in Northern Ireland alone is not a reason. In circumstances where residence out of the jurisdiction is relied upon, there must be an affidavit disclosing a defence upon the merits. Rule 4, on the other hand, does permit an order to be made against a plaintiff who is fact resident in the jurisdiction although that residence is temporary and the plaintiff is ordinarily resident outside the jurisdiction. Furthermore, rule 5 supplies a particular rule for actions for the recovery of land and it clearly permits an order to be made against a plaintiff resident within the jurisdiction.
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> 30. Apart from these indications that a plaintiff resident within the jurisdiction may, in certain circumstances, be required to provide security for costs, the case law demonstrates that there is at least one further category in which orders have been made under the precursors of the present O. 29. These are cases where the plaintiff is a nominal plaintiff as, for

example, where an action is continued after the plaintiff has disposed of his interest in the subject matter of the action. In *Cowell v. Taylor* (1885) 31 Ch.D 34, the Court of Appeal of England and Wales had to consider an issue which arose as between the established practice of not requiring security to be given by a plaintiff suing as a trustee in bankruptcy or liquidation on the one hand, and the authority for the proposition that security could be required of a nominal plaintiff. Bowen L.J. summarised the position:

> 'The general rule is that poverty is not bar to a litigant, that, from time immemorial has been the rule at common law, and also, I believe in equity. There is an exception in the case of appeals, but there the appellant has had the benefit of a decision by one of Her Majesty's Courts, and so an insolvent party is not excluded from the Courts, but only prevented, if he cannot find security, from dragging his opponent from one Court to another. There is also an exception introduced in order to prevent abuse, that if an insolvent sues as nominal plaintiff for the benefit of somebody else, he must give security. In that case the nominal plaintiff is a mere shadow'.

31. Later in the same judgment Bowen L. J. quotes from the judgment of Bovill C.J. in the pre-Judicature Act case of *Sykes v. Sykes* (Law Rep. 4 C.P. 645) where the Chief Justice said:

> 'To entitle a defendant to security, he must shew not only that the plaintiff is insolvent, but also that he is suing as a nominal plaintiff, in the sense of another person being beneficially interested in the result of the action. In that case the Court would stay the proceedings until security is given. That doctrine, however, has never been applied to the case of an executor or the assignee of a bankrupt.'"

25. As appears, the conclusion of Cooke J. was in the negative, in the sense that O. 29 does not exclude from the jurisdiction of the Court the making of an order for security against a plaintiff ordinarily resident in the jurisdiction. He reached this conclusion by reference to its antecedence and, as he points out, O. 29, r. 5 expressly envisages the making of an order for security for costs in actions for the recovery of lands against a plaintiff resident within the jurisdiction. However, importantly, he also referred to what has always been in his words "a principle of court practice", or in those of Bowen L.J. in the extract to which he refers, "a rule at common law. . . and in equity" that the poverty or insolvency of a plaintiff resident within the jurisdiction is not a ground for the grant of such an order. It must be recalled that the only basis upon which it was contended in *ABM Construction* that an order should be made was the insolvency of the claimant unlimited company. Insofar as Laffoy J. was considering the jurisdiction of the Court to make an order for security for costs against the unlimited company resident in the jurisdiction, it was on the basis that it was insolvent. In *Cook v. Whellock* cited by Cooke J., which concerned an application for security against a plaintiff who was an undischarged bankrupt, in the Court of Appeal, Lord Esher M.R. at p. 661, stated:

> "It is quite clear that mere poverty is not a sufficient ground for making a plaintiff give security for costs. It is alleged here that the plaintiff is a mere nominal plaintiff."

Lopes L.J., in the same case, at pp. 662 to 663, stated:

> "In *Rhodes v. Dawson* 16 Q.B.D. 548, on a somewhat similar application for security for costs, the whole matter was carefully considered; and it seems to me that the question in this case is really answered by the judgment in that case, where a passage from Chitty's *'Archbold'* (Vol. I, p. 398) is cited with approval, such passage being to the following effect:
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> > 'The plaintiff will not be compelled to give security for costs merely because he is a pauper, or bankrupt, or insolvent …'"

In that case, also at issue was the question as to whether an undischarged bankrupt was to be considered a nominal plaintiff and the Court considered that he was not to be so considered.

26. In Ireland, in *Kenealy v. Keane* [1901] 2 I.R. 640, in a decision given in 1900 in the Queen's Bench Division in an application for security for costs pursuant to a statutory right to same in s. 89 of the Municipal Corporations (Ireland) Act 1840, Kenny J., explained the then position in the Queen's Bench Division under the Judicature Acts in a passage which must be considered *obiter* having regard to the application before the Court, but nevertheless of interest to the present consideration. At p. 644 to 645, he stated:

> "It is every-day practice in this Court under the Judicature Act, where collusion is shown or where a sham plaintiff, or a person acting as trustee or assignee for the real plaintiff, who is outside the jurisdiction, is put forward, to make an order staying proceedings until security for costs be given. But it is opposed to the practice of the Courts, and to the course of legislation, to order that any person against whom the only allegation is that he is a pauper, should be obliged to give security for costs; and, in no case that I know of, under the Judicature Act, where the only allegation is that a plaintiff living within the jurisdiction has no means, has such an order been made. There must be something more to lead the Court to the conclusion that security should be given."

27. Accordingly, it appears to me that there is no conflict between the judgments in *ABM Construction and Goode Concrete* insofar as each decision considers whether the Court has jurisdiction pursuant to either O. 29 or its inherent jurisdiction to make an order for security for costs against a plaintiff resident in the jurisdiction (or within the EU) upon the grounds of poverty or insolvency. That was the context and basis upon which the issue was considered in *ABM Construction* and a conclusion was reached that the Court had no jurisdiction. In the passage cited above in *Goode Concrete*, Cooke J. also recognised this long-standing principle, whether it be one of practice or at common law or in equity. It appears that what is referred to as an assumption or practice in relation to the general applicability of O. 29 only to persons resident outside of the jurisdiction may well be based upon what Bowen L.J. in the 1885 decision *Cowell v. Taylor*, described as the general rule "from time immemorial" that at common law, and as he believed, also in equity, "poverty is not a bar to a litigant". It would appear also from the same decision that as early as 1885, there was an exception in the case of appeals as is currently reflected in O. 58, r. 17 of the Rules of the Superior Courts.

28. The older decisions cited by Cooke J. referred to litigants in general and did not focus upon the position of an unlimited company. Nevertheless, there is nothing in the decisions to which my attention was drawn which suggests that the principle that poverty or insolvency is not a bar to a litigant is confined to a natural person. In circumstances where the Oireachtas has addressed the question of the circumstances in which a company registered in Ireland should be required to give security for costs and confined s.390 to a limited company, it does not appear there is any basis upon which this Court may distinguish the position of a plaintiff which is an unlimited company from that of a natural person in the application of the general principle. I would respectfully agree with

what was stated by Clarke J., in relation to any change, in *Salthill Properties Ltd. and Brian Cunningham v. Royal Bank of Scotland plc. and Others* [2011] 2 I.R. 441 at p. 454, para. 34, and set out above, albeit in the context of an application for security for costs against a natural person resident in the jurisdiction.

29. However, as also appears from the authorities cited by Cooke J., there appears to have been a long-standing jurisdiction to make orders for security for costs in relation to a person suing as a nominal plaintiff on grounds of insolvency. It appears from the judgment of Bowen L.J. in *Cowell v. Taylor*, that this exception may have been introduced in order to prevent abuse, suggesting that the exception may well have been introduced pursuant to the inherent jurisdiction of the courts. As pointed out by Cooke J. at para. 36 of his judgment in *Goode Concrete,* the Court has a well established inherent jurisdiction to prevent abuse in proceedings before it, including striking out proceedings bound to fail (*Barry v. Buckley* [1981] I.R. 306) and in respect of repeat litigants, the so-called "Isaac Wunder" orders. However, in my judgment, on the present law, it cannot be regarded as an abuse of process for an insolvent or impecunious plaintiff to bring a claim pursuant to a recognised cause of action which is its own cause of action and which cannot be objected to as an abuse of process on one of the recognised grounds such as repeat litigation or a claim which is bound to fail.

30. It is unnecessary for me on the facts of this application to consider exactly the nature of the jurisdiction which this Court may have, pursuant to its inherent jurisdiction and applying O. 29 in accordance with established law to make an order for costs against an insolvent person who is acting as a nominal plaintiff. On the facts of this application, I have concluded that Mavior, in pursuing the present proceedings, is not a nominal plaintiff for the purposes of such a jurisdiction in accordance with the cited decisions.

31. Mavior brings these proceedings as a person who contends that it carried out work for the benefit of another *i.e*. the defendant, either pursuant to a contract entered into with it by MJBCH Limited on behalf of the defendant, or alternatively, at the request of the defendant which now benefits from it. It claims that in consequence, it is either entitled to be paid for the work done pursuant to contract, or on the basis of the well established principles relating to a *quantum meruit* claim. Whilst the defendant disputes the existence of a contract between it and Mavior, it does not dispute that Mavior carried out work or that it currently benefits from the work which was carried out. It disputes the quality of the work and contends that there is no balance due to Mavior in excess of the amounts already paid on any *quantum meruit* basis.

32. I make no judgment as to the merits of the claim brought by Mavior against the defendant. However, the claim made is one which belongs to Mavior and Mavior alone. It is the only person with the cause of action as pleaded. In no sense is it pursuing the cause of action as nominee for another. It is the legal person with the cause of action. As in many cases where a plaintiff is a company, either limited or unlimited, its arrangements with its creditors or shareholders may be such that they are the persons who will, in practice, benefit from the proceedings, if successful. The defendant contends that it is Ms. Killilea who will, in practice, benefit from these proceedings, if successful. That may be so. Mr Ryan, an in-house accountant of Mavior, deposes that she made loans subordinated to the other liabilities of Mavior which are principally costs incurred in connection with the reinstatement works. However, as the claim is for work done by Mavior, a distinct legal person, pursuant to an alleged contract or on a *quantum meruit* basis, it is not a nominal plaintiff in the sense in which that term is used in the decisions to which reference is made in *Goode Concrete v. CRH & Ors* and which establish the longstanding jurisdiction to make, by way of exception, an order for security for costs against a resident plaintiff on grounds of insolvency where the person is acting as a nominal plaintiff.

33. Accordingly, I refuse the application for security for costs.