Neutral Citation: [2013] IEHC 387

THE HIGH COURT

[2013 No. 602P]

BETWEEN

THE BARGE INN LIMITED

PLAINTIFF

AND

QUINN HOSPITALITY IRELAND OPERATIONS 3 LIMITED

DEFENDANT

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

Parties and their relationship

1. The relationship between the parties to these proceedings at the core of the proceedings is a landlord and tenant relationship. That relationship was created by a lease dated 17th August, 2009 made between Barge Public House Limited as landlord, the plaintiff as tenant and Philip Hickey (Mr. Hickey) as guarantor (the 2009 Lease). Barge Public House Limited was a company in the Quinn Group of companies, which demised the licensed premises known as "The Barge", 42 Charlemont Street, Dublin, 2, together with fixtures and fittings and all additions, alterations and improvements thereto (the Demised Property) to the plaintiff for the term of twenty years commencing on 1st April, 2004 at the initial yearly rent of €400,000, which rent was subject to review at five yearly intervals on an upwards only basis, the first review date after execution of the 2009 Lease being 1st April, 2014.

2. After the collapse of the Quinn Group enterprises, by virtue of a conveyance for value dated 2nd December, 2011, Barge Public House Limited conveyed the freehold reversion in the Demised Property to the defendant, whereupon the defendant became the plaintiff's landlord in relation to the Demised Property.

3. Mr. Hickey had been the tenant of the Demised Property since 1994. Initially, he held the Demised Property under an agreement for lease dated 13th June, 1994 from Quinn Hotels Limited, whereby the Demised Property was agreed to be let to Mr. Hickey for the period commencing on 10th June, 1994 and ending on 31st March, 2004. After that term expired on 31st March, 2004, Mr. Hickey or the plaintiff continued to trade in the Demised Property without the formalities of a new lease being put in place, although the understanding was that a new lease would be put in place at an initial rent of €400,000 *per* annum. While there is some confusion on the evidence on this point, I consider that it can be assumed that rent at that rate was actually paid from approximately May 2005. While these proceedings only concern the Demised Property, and the attempt by the defendant to terminate the landlord and tenant relationship between the defendant and the plaintiff by forfeiture of the 2009 Lease, the issues which have been raised in the proceedings necessitate the consideration of two other landlord and tenant relationships between companies in the Quinn Group and companies effectively controlled by Mr. Hickey in relation to two other licensed premises in Dublin city centre.

4. One of those licensed premises was formerly known as Messrs. Maguire (Messrs.) and was located at 1 – 2, Burgh Quay, Dublin, 2. By virtue of a lease dated 11th June, 2008 made between Messrs. Maguire Public House Limited, a company in the Quinn Group, and Oreldrove Taverns Limited (Oreldrove), of which Mr. Hickey and Danny O'Connell (Mr. O'Connell) were directors, Messrs. was demised to Oreldrove for the term of four years and nine months from 3rd March, 2008 at the initial yearly rent of €670,000, which rent from 3rd March, 2010 was subject to review yearly in accordance with the Consumer Price Index. By virtue of a conveyance for value dated 2nd December, 2011 made between Messrs. Maguire Public House Limited of the one part and Quinn Hospitality Ireland Operations 5 Limited of the other part, the freehold and leasehold reversions in Messrs. became vested in Quinn Hospitality Ireland Operations 5 Limited. Subsequently, in early November 2012 the lease of 11th June, 2008 was forfeited and Quinn Hospitality Ireland Operations 5 Limited re-entered and took possession of Messrs. Mr. Hickey accepted that the lease of 11th June, 2008 was forfeited and thereupon he ceased to have an interest in Messrs. At the time of the forfeiture, the rent payable by Oreldrove was in excess of €1.3m in arrears.

5. The other licensed premises in which Mr. Hickey had an interest was during his tenancy known as The Q Bar, having been formerly known as "The Harp Bar", and was situate at O'Connell Bridge, Dublin, 2. Mr. Hickey was originally the tenant of The Q Bar from around 2000 to 2005. Subsequently, a company of which Mr. Hickey and Mr. O'Connell were directors, the correct name of which was Balendale Inns Limited (Balendale), not Ballendale Inns Limited as appears in the relevant agreements, became tenant of those premises from a company in the Quinn Group, Quinn's Q Bar Limited, initially for a term of four years and nine months from 1st September, 2005 at a rent which was subject to review in accordance with the Consumer Price Index. By an undated agreement executed by Quinn's Q Bar Limited and Balendale, The Q Bar was demised to Balendale for a further term of one year from 1st June, 2010 at a rent of €13,199 exclusive of VAT *per* month, equivalent to an annual rent of €158,388 exclusive of VAT. The title position in relation to The Q Bar was obviously complicated, because those licensed premises, which are on the ground floor of O'Connell Bridge House, were, in turn, held by the landlord company in the Quinn Group as lessee from a landlord variously referred to as Carlisle, or Carlisle Trust, or John Byrne in the documentation before the Court. In any event, there was an arrangement that the rent payable by Balendale in respect of The Q Bar would be paid in part to Carlisle and in part to the Quinn Group landlord. While I have found it impossible to understand the full implications of that arrangement from the evidence, I consider that it is not of any great relevance to the issues this Court has to determine. The arrangement between Carlisle and the Quinn Group and also Balendale's interest in The Q Bar were terminated by agreement in December 2011 between the three parties involved, who agreed that the terms of settlement would be confidential. The important point is that Mr. Hickey ceased to have a tenant interest through Balendale in The Q Bar from December 2011, although Balendale remained in occupation until January 2012 by agreement. As I understand it, Balendale was subsequently wound up in a creditors' voluntary liquidation.

6. The core issue in these proceedings is what was agreed between the agents of the defendant's predecessor in title, Barge Public House Limited (hereafter referred to as "Barge former landlord"), and the plaintiff in April 2010 in relation to the rent payable by the plaintiff in respect of the Demised Property in the future. A subsidiary issue which emerged at the hearing of the proceedings is what, if anything, was agreed in January 2012, after the defendant had acquired the freehold reversion, between the defendant and the plaintiff in relation to the rent payable in the future by the plaintiff in respect of the Demised Property.

7. There has been a large element of continuity between the personnel involved on both sides of the landlord and tenant relationship in relation to the Demised Property. On the tenant side, at all material times Mr. Hickey and Mr. O'Connell have been directors of the plaintiff. Mr. Hickey effectively ran the public house business in the Demised Property, whereas Mr. O'Connell was the accountant and financial controller of the business. He was also involved in the business since 1994. On the landlord side, in April 2010 there was Ms. Colette Quinn (Ms. Quinn), a daughter of Sean Quinn, who had been employed by the Quinn Group from 2004 as Hotel Operations Director. She was involved in the arrangements put in place in April 2010 in relation to the rent of the Demised Property. At that time, Mr. Anthony Fitzpatrick (Mr. Fitzpatrick) was Financial Accountant in the hotels and property division of the Quinn Group. He is now an Asset Manager with Quinn International Property Management of which, as I understand it, the defendant is a subsidiary, being a special purpose vehicle which holds the freehold reversion in the Demised Property. Mr. Paul Morgan (Mr. Morgan) is the Chief Executive Officer of Quinn International Property Management. Prior to April 2011, when Irish Bank Resolution Corporation enforced its security over, and effectively took control of, the Quinn Group property portfolio, Mr. Morgan was involved with the Quinn Group and, in particular, towards the end of 2010 he became involved in the management of the licensed premises in the Quinn Group in general. From the beginning of 2011 he was more heavily involved in dealing directly with Mr. Hickey and Mr. O'Connell in relation to the licensed premises let to Mr. Hickey's companies.

8. Mr. Hickey, Mr. O'Connell and Ms. Quinn gave evidence on behalf of the plaintiff as to the arrangement entered into concerning the rent payable in respect of, *inter alia*, the Demised Property in April 2010 and Mr. Fitzpatrick gave evidence on behalf of the defendant. The principal factual controversy in these proceedings arises on the core issue, as to what was agreed by the plaintiff and Barge former landlord at that time in relation to the rent payable in the future for the Demised Property. Before considering the evidence and attempting to resolve the controversy, I think it is useful to consider the *inter partes* correspondence between the solicitors for the defendant (William Fry) and the solicitors for the plaintiff (Noel Smyth & Partners) from 31st October, 2012 until these proceedings were initiated and then to consider the plaintiff's case as pleaded and the defendant's defence and counterclaim as pleaded.

***Inter partes* correspondence**

9. By letter dated 31st October, 2012 addressed to the secretary of the plaintiff and also to Mr. Hickey, the defendant's solicitors served a forfeiture notice on the plaintiff. The forfeiture notice alleged that the plaintiff was in breach of the terms of the 2009 Lease by failure to pay rent totalling €251,454.52 inclusive of VAT. It was also alleged that the plaintiff was in breach of a covenant in the 2009 Lease to pay and indemnify the landlord in respect of rates. Clause 7.1 of the 2009 Lease, the forfeiture clause, was invoked and notice was given that, unless the plaintiff remedied the breaches of covenant by paying the full sum of €251,454.52 in respect of rent inclusive of VAT and provided written evidence from the local authority of the discharge of the rates by 5pm on 7th November, 2012, the landlord would re-enter and take possession of the Demised Property.

10. In their response of 2nd November, 2012, the plaintiff's solicitors stated that they did not accept that the forfeiture notice was valid. The one point they made which remains of peripheral relevance only for present purposes was that they contended that the defendant had reduced the rent in respect of the Demised Property to €22,140 inclusive of VAT (*i.e.* €18,000 plus VAT at 23%) *per* month since January 2012, to which the defendant's solicitors, in their letter of 5th November, 2012, responded as follows:

> "It is totally incorrect to say that our client reduced the rent to €22,140 (inclusive of VAT) per month since January 2012. Your client unilaterally reduced the rent it was prepared to pay; this was never agreed to or accepted by our client. For the avoidance of doubt, our client did not enter into any agreement with your client regarding the reduction of rent. However the sums sought reflect an agreement that appears to have been put in place by our client's predecessor in April 2010, reducing the rent to €273,228 (*sic*) per annum."

That position was persisted in by the defendant's solicitor in a letter of 7th November, 2012.

11. On the same day, 7th November, 2012, the plaintiff's solicitors, on behalf of the plaintiff, discharged the sum of €251,454.52 claimed by the defendant to be due by the plaintiff in full. However, payment was made on the basis that part of that sum amounting to €58, 658.70 was paid without prejudice to the plaintiff's contention that the rent had been reduced since January 2012 on the basis outlined earlier. By letter dated 9th November, 2012, the defendant's solicitors acknowledged receipt of the sum of €251,454.52 and confirmed the defendant's withdrawal of the forfeiture notice dated 31st October, 2012, while rejecting again the plaintiff's contention that the rent had been reduced by agreement in January 2012.

12. The next step taken by the defendant effectively precipitated these proceedings. By letter dated 16th November, 2012, the defendant's solicitors, having once again rejected the plaintiff's contention that the rent had been reduced from January 2012, went on to state:

> "Separately, the previous reduction in rent in the amount set out in the Lease of €400,000 per annum to the current rent of €273,228 per annum was a temporary arrangement. This arrangement is now hereby withdrawn and terminated and from today's date, the rent will be €400,000 per annum."

The defendant's solicitors also sought written evidence of the discharge of the rates, failing which a fresh forfeiture notice would be issued.

13. The response of the plaintiff's solicitors, by letter dated 5th December, 2012, was that the reduction in rent to €273,228 *per* annum was not a temporary arrangement, but was agreed "as a permanent reduction as part of an overall agreement to reduce the total rent to €1,100,000 for three pubs; Q-Bar, The Barge and Messrs. Maguire".

14. The ultimate outcome was that the defendant served a fresh forfeiture notice dated 14th January, 2013 on the secretary of the plaintiff and on Mr. Hickey. The alleged breach of covenant was failure to pay rent totalling €19,491.20 inclusive of VAT, on the basis that the rent reserved by the 2009 Lease was €400,000 *per* annum from 16th November, 2012. There was no allegation in that forfeiture notice that there was a breach of the covenants in the 2009 Lease by reason of non-payment of rates or non-payment of water rates.

15. The response of the plaintiff was to initiate these proceedings, which were initiated by a plenary summons which issued on 21st January, 2013. On the following day, 22nd January, 2013, the High Court (Laffoy J.) made an interim order restraining the defendant from re-entering the Demised Property until further order. The plaintiff has continued in possession of, and has been trading in, the Demised Property since then.

The plaintiff's claim as pleaded in the statement of claim

16. The kernel of the plaintiff's claim is that by an agreement made on 8th April, 2010 between the plaintiff and Barge former landlord, Barge former landlord agreed to vary the 2009 Lease by reducing the rent to from €400,000 to €273,225 *per* annum from 1st April,

2010 until the next rent review date which would fall on 1st April, 2014. It was pleaded that the agreement was made in recognition of the following facts:

> (a) that the initial rent of €400,000 *per* annum was significantly in excess of the open market rent as of the date of the execution of the lease and subsequently;
>
> (b) that financial difficulties were being encountered by the vast majority of tenants, including the plaintiff;
>
> (c) the importance to the defendant from an estate management point of view in securing the mutually beneficial continuation of the plaintiff in the management of a successful, well run and well known business from the Demised Property; and
>
> (d) the fact that no substitute tenant would be found on the open market capable of replacing the plaintiff as a quality tenant of the Demised Property.

It was pleaded that the agreement was evidenced by an e-mail of 8th April, 2010 from Fiona Kenny (Ms. Kenny), an agent of the Barge former landlord. It was also pleaded that it was evidenced by the forfeiture notice of 31st October, 2010, in that the arrears of rent claimed in it were calculated on the basis of the reduced reserved rent of €273,225 *per* annum.

17. The plaintiff specifically pleaded that the agreement of 8th April, 2010 was acted on by both parties and they placed reliance on it. The position of the plaintiff was elaborated on in a reply to notice of particulars served on behalf of the defendant, in which the plaintiff asserted that in reliance thereon, the plaintiff had invested money, time and effort in the business on the understanding and belief that the parties had negotiated a sustainable rent which was mutually beneficial. Improvements carried out by the plaintiff to the Demised Property after April 2010 were itemised.

18. It was pleaded that the plaintiff paid the arrears of rent claimed by the defendant on 7th November, 2012 in reliance on the agreement of 8th April, 2010 and in reliance on the defendant's acknowledgement of it and, in the circumstances, the defendant is estopped from denying the existence of the said agreement and its effect.

19. The plaintiff's case, as pleaded,was that by purporting to terminate the agreement of April 2010 and by claiming that the contractual rent is €400,000 *per* annum, the defendant has acted unlawfully, in breach of contract, negligently and in derogation of grant. Further, it was contended that the defendant is by its actions estopped from terminating, resiling from or otherwise denying the ongoing lawful effect of the agreement of April 2010 upon which the plaintiff has relied and continues to rely and that the defendant is estopped from purporting to seek to forfeit the 2009 Lease or re-enter the Demised Property.

20. Two "fallback" positions have been maintained by the plaintiff in the pleadings and at the hearing of the proceedings. The first is that, if the defendant had an entitlement to terminate the agreement of April 2010, it could only do so by notice. The second is that, if that agreement has been terminated, then the plaintiff is entitled to and seeks relief against forfeiture pursuant to s. 14 of the Conveyancing Act 1881 (the Act of 1881).

21. Arising from the foregoing, the primary relief sought by the plaintiff is an order restraining the defendant from re-entering the Demised Property or taking any steps on foot of the forfeiture notice dated 14th January, 2013. The plaintiff has also claimed a declaration that the rent payable by the plaintiff to the defendant under the 2009 Lease is in the sum of €273,225 *per* annum from 1st April, 2010 up to 1st April, 2014, thereby, apparently, abandoning the claim that the rent payable is €18,000 plus VAT *per* month.

The defence of the defendant and its counterclaim

22. The defendant's position in relation to the agreement of April 2010 alleged by the plaintiff has been pleaded as follows:

> (a) any agreement reached to accept a reduced rent was temporary in nature, by way of concession on a month to month basis, and revocable at will and it was revoked on 16th November, 2012;
>
> (b) any such concessions were part of a temporary arrangement for the reduction of the rent in respect of the Demised Property, The Q Bar and Messrs. and, in circumstances where neither the plaintiff nor any of its related companies or members hold any interest in Messrs., and the defendant no longer has an interest in The Q Bar, the plaintiff is not entitled to continue to assert or rely on the temporary arrangements or concessions given by the defendant;
>
> (c) any agreement to vary the terms of the 2009 Lease is not enforceable by virtue of the provisions of s. 51 of the Land and Conveyancing Law Reform Act 2009 (the Act of 2009), but reliance on the provision, which provides that no action shall be brought to enforce any contract for the sale or other disposition of land unless the agreement on which the action is brought, or some memorandum or note of it, is in writing and signed by the person against whom the action is brought or that person's authorised agent, was not specifically argued in support of the defendant's defence at the hearing; and
>
> (d) without prejudice to the foregoing matters, the plaintiff is not entitled to rely upon acceptance by the defendant of part of a liquidated sum due as being in satisfaction of the whole sum due, which, as will appear later, amounts to a plea that the plaintiff gave no consideration for the rent reduction put in place in April 2010 and the so-called rule in *Pinnel's* Case applies.

23. Apart from the foregoing specific pleas, in the defence the defendant traversed all of the allegations made by the plaintiff in the statement of claim. It contended that relief against forfeiture should not be afforded to the plaintiff, whether on equitable or statutory grounds, because of the repeated failure of the plaintiff to pay rent due in the past, its current failure to pay rent, its admission that it will not be in a position to pay the rent falling due, its failure to discharge rates, and its attempt to assign and its subsequent purported assignment and later reversal of the assignment of the leasehold interest created by the 2009 Lease without the consent of the defendant.

24. In reliance on the forfeiture clause in the 2009 Lease and the failure of the plaintiff to discharge the rent claimed in the notice of 14th January, 2013, the defendant counterclaimed for recovery of possession of the Demised Property and for judgment for arrears of rent and mesne rates.

The plaintiff's reply and defence to counterclaim

25. Predictably, the plaintiff joined issue with all of the assertions in the defence and counterclaim and denied the entitlement of the

defendant to any relief under the counterclaim. Specifically, by way of defence to the defendant's counterclaim for possession, the plaintiff has pleaded that the defendant is estopped from denying the ongoing existence and/or validity of the agreement of 8th April, 2010 to reduce the rent reserved by the 2009 Lease.

26. The core factual controversy raised on the pleadings is the controversy which has been identified earlier: what if anything was agreed between Barge former landlord and the plaintiff in April 2010 in relation to the future rent payable under the 2009 Lease.

The evidence in relation to the core factual controversy
27. It is clear from the evidence that Mr. Hickey and Mr. O'Connell were seeking reductions in the rents payable in respect of the Demised Property, The Q Bar and Messrs. from the respective landlords in the Quinn Group from January 2010 onwards. In an e-mail to Ms. Quinn's assistant, Ms. Kenny, on 28th January, 2010, which followed a meeting between Mr. Hickey and Mr. O'Connell and representatives of the Quinn Group on 21st January, 2010, Mr. O'Connell outlined the difficulties that were being encountered in relation to the business being conducted in all three licensed premises. He outlined the nature of what he referred to as their "cash crisis" in some detail. Mr. O'Connell continued to furnish details of the difficulties being encountered to Ms. Kenny. In an e-mail of 2nd March, 2010, he stated that it was essential that the rents should be reviewed to reflect the then current conditions, contending that the rents being paid in respect of Messrs. and The Q Bar were 50% higher than "the market rent at the height of the Celtic Tiger economy".

28. A meeting was held on 25th March, 2013 to address the issue of the rents in relation to the three licensed premises. Present at the meeting were Mr. Quinn, Ms. Quinn and Ms. Kenny on behalf of the landlords and Mr. Hickey and Mr. O'Connell on behalf of the tenants. Mr. Hickey's evidence was that the position of the tenants was that the rents were too high and they wanted a permanent rent reduction. His evidence was that at the meeting Mr. Quinn agreed to reduce the aggregate rents for the three licensed premises from approximately €1.7m *per* annum to €1.4m *per* annum and the breakdown of the reduction between the three premises was to be decided on by the landlords. Mr. Hickey's evidence was that, as far as the tenants were concerned, the agreement was a permanent agreement, which, as regards the Demised Property, was to last until the next rent review date under the 2009 Lease, that is to say, until 1st April, 2014.

29. Mr. O'Connell's recollection of what occurred at the meeting of 25th March, 2010 was that most of the meeting was taken up with Mr. Hickey and Mr. O'Connell explaining their position and explaining that a rent reduction would be needed and that a temporary solution would not be adequate. His recollection was that before the meeting came to an end, Mr. Quinn stated, as he put it "quite abruptly", that he was going to reduce the rent on the three licensed premises to €1.4m and that the breakdown between the three would be addressed by Ms. Quinn and Ms. Kenny and communicated to Mr. Hickey and Mr. O'Connell. Mr. O'Connell's evidence was that 25th March, 2010 was the first occasion on which the rents payable in respect of the three licensed premises were considered "in the one figure". Further, the Quinn Group agreed that the rent for the month of March 2010 would be waived in respect of all three licensed premises.

30. By e-mail dated 26th March, 2010, which was the date following the meeting, from Ms. Kenny to Mr. Fitzpatrick, Ms. Kenny summarised what "was agreed" at the meeting with Mr. Hickey as follows:

> "One month's free rent on all three pubs.
>
> re [Messrs.] they will still be entitled to the other two month's free rent (as agreed last year).
>
> this one month's free rent can be applied against the existing arrears.
>
> From 1st April overall rent on the 3 combined pubs has been reduced to 1.4m. This can be split as we decide. I will call you to discuss this . . .."

It would appear that Ms. Kenny asked Mr. Fitzpatrick to analyse the rents payable by Mr. Hickey's companies to the three Quinn Group companies in respect of the three licensed premises. On 29th March, 2010, Mr. Fitzpatrick e-mailed what he referred to as "some rent scenarios for Philip Hickey" to Ms. Quinn and on 1st April, 2010 he e-mailed "revised figures for Philip Hickey" to her. The last segment of the document sent to Ms. Quinn was headed "Revised Rent Schedule". By e-mail dated 8th April, 2010, Ms. Kenny e-mailed the "Revised Rent Schedule" to Mr. O'Connell. That document showed the proposed breakdown of the combined reduced annual rent of €1.4m between the three licensed premises. Mr. O'Connell's evidence was that around the time he received the e-mail he had a telephone conversation with Ms. Kenny, who intimated that she was looking for a return e-mail in response with confirmation of the agreement of Mr. Hickey and Mr. O'Connell to the revision. Mr. O'Connell's response to Ms. Kenny on 8th April, 2010 was as follows:

> "I have checked your figures as set out in your email and confirm our agreement."

31. The "Revised Rent Schedule" dealt with Messrs., the Barge (i.e. the Demised Property) and The Q Bar. As regards The Q Bar it broke down the rent between what was due to "Quinn" and to "Carlisle", although, in my view, that is largely of historical relevance. The effect of acceptance of the Revised Rent Schedule by Mr. O'Connell and Mr. Hickey on the rents thenceforth payable is summarised in tabular form below, the figures shown representing rent exclusive of VAT.

Licensed Premised	**Current Annual Rent**	**Revised Annual Rent**
Messrs	€670,000	€670,000
The Barge	€400,000	€273,225
The Q Bar	€668,717	€456,775
TOTAL:	€1,738,717	€1,400,000

As will be clear from the table, the rent in respect of Messrs. remained the same. Of the revised rent for The Q Bar as set out in the table, €158,383 (or €13,199 *per* month, which subsequently was the rent reserved by the unexecuted agreement referred to earlier, whereby the leasehold term of The Q Bar was extended for one year from 1st June, 2010) was payable to the Quinn Group and €298,392 was payable to Carlisle. As regards the Demised Property and The Q Bar (including the rent payable to Carlisle), the total reduction of €338,717 represented almost 20% of the aggregate of the rents previously paid by the lessees in respect of the three licensed premises.

32. Effect was given to the revised rents immediately. In respect of each month from April 2010 to December 2010 inclusive, the

plaintiff paid the revised rent plus the relevant VAT in relation to the Demised Property to Barge former landlord. However, towards the end of that period, the plaintiff, as Mr. O'Connell put it, started to fall behind with the rent.

33. In her evidence, Ms. Quinn explained the approach adopted by the Quinn Group personnel in offering the Revised Rent Schedule. They wanted to have some logic behind the way they applied the reduction. On the basis of the accountancy information which had been furnished by Mr. O'Connell at the time, the Quinn Group was satisfied that the lessee of Messrs. would be able to pay the then current rent. Therefore, the reduction was split between the lessee of the Demised Property and the lessee of The Q Bar "equally", which I understand to mean that each lessee got the same percentage reduction, which was in the region of 32%.

34. Ms. Quinn testified as to her understanding of the arrangement between the parties following receipt of the e-mail of 8th April, 2010 from Mr. O'Connell: it was that the proposal made by the Quinn Group was accepted by the lessees. Although Ms. Quinn acknowledged that there was no discussion at the meeting as to for how long the reductions were going to last, her evidence was that the revised annual rent of €273,225 was the rent which was to be paid in respect of the Demised Property from April 2010 until the next rent review. In the case of Messrs. and The Q Bar, the revised rents were to be paid until the end of the relevant leases, which were short-term leases. Ms. Quinn rejected a proposition put to her in cross-examination that what was on offer from the Quinn Group was a package in relation to the three licensed premises. Her evidence was that it was never intended to be a package and that each public house was looked at individually.

35. Two reasons were given by Ms. Quinn in her evidence for the Quinn Group's willingness to reduce the rent paid by Mr. Hickey's companies. The primary reason was that the Quinn Group had a long relationship with Mr. Hickey and wanted to keep him as tenant. They did not feel they would get more rent from anybody else. Secondly, even if some other prospective tenant would come close to paying the rent which Mr. Hickey would pay, it would cost the Quinn Group during what she referred to as "the down time", because they would have had to run the public houses for a month or two themselves until new tenants were installed.

36. In relation to the reference in Ms. Kenny's e-mail of 26th March, 2010 to "free rent" periods, Mr. O'Connell in his evidence explained that in the previous year, 2009, it had been agreed that Messrs. would be "given three months off rent" in 2009, followed by two months free of rent in 2010 and one month free of rent in 2011. It is clear on the evidence that those concessions were implemented. Ms. Quinn's evidence was that at the time of the meeting of 25th March, 2010, the representatives of the Quinn Group were of the view that something was needed which was going to be "more long-term" than the arrangement entered into in the previous year because, as she put it, "this to-ing and fro-ing just wasn't the way we wanted to operate".

Findings on core factual controversy

37. It is pertinent to make the preliminary observation that neither the representatives of the Quinn Group nor Mr. Hickey and Mr. O'Connell representing the lessee companies had the benefit of legal advice in relation to the negotiations they conducted in January and March 2010, the outcome of which was the variation of the rents reserved by the three leases. If they had, no doubt they would have been advised to reduce the consensus they had reached to writing, and, in the case of the 2009 Lease, they would probably have been advised that a deed of variation should be executed, because the 2009 Lease was executed under seal. Unfortunately, that did not happen.

38. Fortunately, there is contemporaneous documentary evidence of the consensus as to the amount of the reduction of the rent reserved by the 2009 Lease. The major problem which confronts the Court is that there is no contemporaneous documentary evidence of the intention of the parties as to the duration of the reduction. It is true that the Court has evidence from one of the main players on each side of the negotiations, Mr. Hickey, on the tenant side, and Ms. Quinn, on the landlord side, as to what was their understanding as to what was agreed as to the duration of the reduction and there is consensus between them that it was to be until the next review date, that is to say, 1st January, 2014. However, as I have recorded, Ms. Quinn acknowledged that the duration of the reduction was not discussed at the meeting on 25th March, 2010. Therefore, while I have no doubt that both Mr. Hickey and Ms. Quinn were endeavouring to give the Court a true version of what happened, I suspect their evidence on that point is tinged with hindsight.

39. In order to ascertain what was the intention of the parties in March and April 2010 as to the duration of the rent reduction, it is necessary to consider the surrounding circumstances. What preceded the "Revised Rent Schedule" in the document e-mailed by Mr. Fitzpatrick to Ms. Quinn on 1st April, 2010 was merely a mathematical exercise to work out the impact of various variations, for example, a flat reduction of €9,400 *per* month in respect of each of the licensed premises. Accordingly, that document is of no assistance in pointing to what the parties intended as the duration of the rent reduction.

40. Mr. O'Connell's e-mail of 28th January, 2010, following the meeting on 21st January, 2010, is much more helpful. Mr. O'Connell attached a spreadsheet to that e-mail in which he set out the turnover and the rent of each of the licensed premises from the year 2006 and the percentage of rent to turnover. It also gave details of costs incurred by the businesses over the four year period and demonstrated the percentage change in relation to various categories of cost, with a view to demonstrating that the turnover and costs did not decrease in the same proportions. Mr. O'Connell analysed the figures in relation to the Demised Property. He pointed out that sales and gross profits had decreased by 34% over the period. He summarised in a general way what had happened in relation to the various categories of costs over the same period. He pointed out that after provision for the various categories of costs, there was, as he put it, €695,000 left for rent in 2006, whereas in 2009 what was left was €318,000, despite the fact that the costs had been controlled. His point was that with a rent of €400,000 in 2006 there was still a comfortable surplus, whereas by 2009 the business was making a serious loss. It was made clear in that e-mail that what the plaintiff was asking for was "a reduction in rent to a reasonable market rent". In the subsequent e-mail of 2nd March, 2010, prior to the meeting of 25th March, 2010, Mr. O'Connell furnished further data to the Quinn Group in relation to expenses of the public houses in 2009. In that e-mail he reiterated that it was essential that the rents "should be reviewed to reflect current conditions".

41. The whole thrust of the plaintiff's case as made to the Quinn Group in early 2010 urging reduction of rent in relation to the Demised Property was that because of the economic conditions a rent of €400,000 *per* annum was no longer sustainable. When the Quinn Group, on behalf of Barge former landlord, offered to reduce the annual rent to €273,225 in response to that case and the plaintiff accepted the reduction, in my view, it must be implied that the reduction was to endure while the economic conditions continued to similarly affect the business carried on by the plaintiff in the Demised Property. Such an implied term was reasonable and it gave business efficacy to the landlord and tenant relationship between the parties, which would probably have otherwise collapsed. In contrast, the defendant's contention that what there was consensus on was that the reduced rent was temporary in nature, applicable on a month to month basis and revocable at will flies in the face of commonsense, because it would patently not have resolved the problem confronting the parties. Moreover, it is inconsistent with what subsequently happened. For instance, when the term of the tenancy in The Q Bar was effectively extended for one year from 1st June, 2010, the agreed reduced rent payable to the Quinn Group lessor was applied for the whole of the extended period.

42. The defendant has, in effect, invited the Court to find that it was an implied term of the agreement reached on 8th April, 2010 that it was a "package deal" and that the rent reductions would only continue in force while a Quinn Group company or its successor was the lessor of each of the three licensed premises and a company owned by Mr. Hickey was the lessee of each. That was certainly not the stance adopted by the defendant when the interest of both the Quinn Group lessor and Balendale in The Q Bar ceased by agreement with Carlisle in December 2011. Apart from that, each of the three licensed premises had, as lessor, a corporate entity which was separate and distinct from other lessor companies in the Quinn Group. Moreover, the corporate lessee of each was separate and distinct from the other corporate lessees, although they were all effectively owned by Mr. Hickey. Aside from the question whether, as a matter of law, the various companies could enter into a package deal of the type suggested by the defendant, which was not addressed at the hearing and on which no view is expressed here, as a matter of commonsense, it is difficult to see how it could benefit the plaintiff to participate in a "package deal" the consequence of which would be that if, say, one of the other lessee companies was liquidated and its lease disclaimed, the agreement in relation to the reduction of the rent on the Demised Property would terminate. Accordingly, I find that, notwithstanding that the consensus reached covered the three licensed premises, there was a "standalone" consensus to reduce the rent of the Demised Property to €273,225, which was to be unaffected by what would transpire in relation to the leases of Messrs. or The Q Bar.

43. In summary, I find that there was consensus between Barge former landlord, the defendant's predecessor in title, and the plaintiff that the rent payable by the plaintiff in respect of the Demised Property would be reduced to €273,225 *per* annum and that the reduction would continue while the business carried on by the plaintiff in the Demised Property was adversely affected by prevailing economic circumstances. The legal implications of such consensus will be considered later. It is appropriate now to consider some other factual controversies which arose out of the evidence.

Other factual controversies
Alleged further reduction of rent to €18,000 (exclusive of VAT) per month

44. As recorded earlier, in their letter dated 2nd November, 2012 in response to the first forfeiture notice, the plaintiff's solicitors contended that the defendant had reduced the rent in respect of the Demised Property to €22,140 inclusive of VAT (i.e. €18,000 plus VAT at 23%) *per* month from January 2012. Further, in discharging the arrears of rent claimed by the defendant in the accompanying letter dated 7th November, 2012, the plaintiff's solicitors stated that the arrears were being discharged on the basis that €58,658.70 of the sum paid over was paid without prejudice to the plaintiff's contention that the reduction of rent had been agreed to by the defendant and that the plaintiff reserved the right to pursue the defendant for recovery of the same.

45. What happened after the consensus reached on 8th April, 2010 that the rent of the Demised Property would be reduced to €273,225, as has already been recorded, was that rent at the agreed reduced rate of €273,225 *per* annum was paid in respect of the Demised Property for the months of April to December 2010 inclusive, although in the latter part of that period the monthly payments were made late. For example, the payment due in respect of December 2010 was not made until mid-March 2011. It is clear on the evidence that an arrangement was entered into early in 2011 between the Quinn Group, on the one hand, and Mr. Hickey and his companies, on the other hand, that a combined rent of €20,000 plus VAT *per* week would be paid in respect of the three licensed premises and that the arrangement was to last for a twenty six week period. Mr. O'Connell's evidence was that the plaintiff paid rent at the rate of €6,694.21 (*i.e*. one third of €20,000) plus VAT, making a total of €8,100 *per* week, in respect of the Demised Property from March 2011 and made in total nineteen payments in that amount between 18th March, 2011 and 7th September, 2011. There is no evidence as to how the Quinn Group or its successor appropriated the payments made under the arrangement for payment of €20,000 *per* week plus VAT in respect of the three licensed premises and, accordingly, I assume it was on the same basis as regards the Demised Property. It is to be noted and, indeed, it was observed in the course of Mr. Morgan's evidence that €6,694.21 multiplied by 52, gives a figure of €348,088 in respect of a full year, which is higher than the agreed reduced rent of €273,225 in respect of the Demised Property. In any event, after 7th September, 2011, no further payments of rent in respect of the Demised Property were made by the plaintiff until March 2012.

46. Between 6th March, 2012 and 25th September, 2012, the plaintiff made payments of €18,000 plus VAT at the rate of 23% (aggregating €22,140) to the defendant in respect of the Demised Property covering the months of January to September 2012 inclusive. While the defendant accepted the said payments, I am satisfied on the evidence that the defendant did not agree to reduce the rent payable by the plaintiff in respect of the Demised Property to €18,000 per month plus VAT from January 2012 onwards. While Mr. O'Connell's evidence was that he made a proposal to Mr. Morgan that the plaintiff would pay rent at that level as part of an agreement which would be in place for a period of at least two years, Mr. Morgan did not agree to the proposal but suggested that the plaintiff should start paying that sum anyway, which Mr. O'Connell interpreted as being a "holding agreement" until some other agreement was reached. Mr. Morgan's evidence was clear: he did not tell Mr. O'Connell that he was accepting the proposal, nor did he tell him that it was a holding arrangement. What he told Mr. O'Connell was that the plaintiff "better pay some rent" because, if the defendant was to come to an arrangement with the plaintiff, the defendant needed "to see rent coming in". While there was undoubtedly the prospect of a new arrangement between the plaintiff and the defendant in relation to the Demised Property in the background at that time, it did not come to fruition. I accept Mr. Morgan's evidence that he did not accept the proposal from Mr. O'Connell, because he considered the amount of the proposed rent, €216,000 (exclusive of VAT) per annum, was too low.

47. The manner in which the defendant invoiced the plaintiff in respect of the monthly rent payable in respect of the Demised Property in the period during which the plaintiff was paying rent at the rate of €18,000 plus VAT *per* month gave rise to some confusion. However, I consider that Mr. Morgan's explanation as to why the defendant adopted the course it adopted is wholly plausible. It is convenient to illustrate the course adopted by reference to what happened in the month of April 2012. The defendant issued an invoice to the plaintiff for rent for the month of April in the sum of €22,769 (*i.e*. one twelfth of €273,225), together with VAT at the rate of 23%, the total amount of the invoice being €28,005.87. The defendant also issued a credit note to the plaintiff dated 30th April, 2012 "for difference of rental charge an amount actually received" (€4,769) and VAT at 23%, aggregating €5,865.87. That credit note reflected the difference between the reduced annual rent of €273,225 plus VAT and the rent which the plaintiff was paying on foot of its proposal, €18,000 *per* month plus VAT. I am satisfied that the invoice/credit note device, which Mr. Morgan testified the defendant used after consultation with the Revenue Commissioners, was designed to limit the liability of the defendant to remit VAT to the Revenue Commissioners on the amount actually received from the plaintiff. The device does not in any way corroborate the plaintiff's contention that there was a "holding arrangement", whereby the plaintiff was only liable for rent at €18,000 *per* month plus VAT from January 2012.

48. In fact, the plaintiff has not pleaded in its statement of claim that the parties agreed to a further reduction of the rent payable in respect of the Demised Property to €18,000 (exclusive of VAT) *per* month in January 2012. As has been recorded earlier, the declaration sought in the prayer in the statement of claim is a declaration that the rent payable under the 2009 Lease is in the sum of €273,225 *per* annum from 1st April, 2010 to 1st April, 2014 (the reference to 2015 being acknowledged to be an error).

Intended capital investment by Quinn Group in the amount of €100,000

49. Either at the meeting held on 21st January, 2010 or at the meeting held on 25th March, 2010 there was a proposal that the Quinn Group would invest €100,000 in carrying out improvements to the licensed premises held by Mr. Hickey's companies as lessees from the Quinn Group or some of them. On the evidence, I think it is probable that the proposal arose at the meeting of 25th March, 2010, because by e-mail dated 1st April, 2010 to Mr. O'Connell, Ms. Kenny asked Mr. O'Connell to put together proposals "for year 100k capital investment as discussed". Mr. O'Connell had no recollection of responding to that e-mail at the time. However, four months later, he addressed the matter in an e-mail of 3rd August, 2010 to Ms. Kenny. That e-mail was primarily concerned with the payment by Mr. Hickey's companies of rent over the remainder of the year. Mr. O'Connell stated that they were hoping to make full payment every month, but, in order to achieve this, they were hoping that sales would improve noticeably due to changes they were making in Messrs. and The Q Bar. He concluded the e-mail by stating:

> "Please call me when you can regarding the €100k spend on Messrs. and [The Q Bar] as this is fundamental to achieving the improvements necessary to improve sales."

50. On the evidence, I think it is appropriate to conclude that the proposal that the Quinn Group would make a capital investment of €100,000 related to Messrs. and The Q Bar. Even if that conclusion is incorrect, and it was envisaged that the Demised Property would benefit from the capital investment, the reality of the situation is that the investment of capital never took place. In the circumstances, I cannot see how the proposal made at the meeting of 25th March, 2010 has any bearing on the issues the Court has to determine.

Improvements carried out by the plaintiff to the Demised Property

51. The plaintiff's witnesses proved that the plaintiff spent over €42,000 in improvements to, and the upgrading of, the Demised Property after 8th April, 2010. More than 50% of the expenditure related to the refurbishment of the kitchen. Other items of expenditure included the installation of CCTV equipment, the purchase of television sets, including a "3D TV and 100 glasses", and the provision of planters for the external smoking areas. However, the evidence did not establish any direct link between the consensus reached between the representatives of the Quinn Group and the plaintiff to reduce the rent of the Demised Property to €273,225 *per* annum, on the one hand, and the decision of the defendant to incur such expenditure on improvements and upgrading. Moreover, the plaintiff had obligations under the lessee's covenants in the 2009 Lease to comply with regulatory requirements and to keep the Demised Property in good order, repair and condition. On the evidence, it is impossible to form a view as to the extent to which the expenditure incurred by the plaintiff was necessary to comply with its obligations under the lessees' covenants in the 2009 Lease and how much was actually voluntary.

The financial state of the defendant

52. Counsel for the defendant explored the financial state of the plaintiff both currently and in 2012 through cross-examination of the plaintiff's witnesses. The following facts emerged from the evidence:

> (a) The plaintiff has paid rent in respect of the Demised Property at the reduced rent of €273,225 *per* annum plus VAT monthly for each month from November 2013 to date.
>
> (b) Rates in respect of the Demised Property have been paid in full to 31st December, 2012. There is an agreement in place for the payment of rates for 2013, which are to be discharged by 31st December, 2013. Those facts have been confirmed by an e-mail from the Rate Collector.
>
> (c) The plaintiff has an arrangement to discharge accrued water rates in the sum of €14,500, by monthly payments of €1,000 *pe*r month.
>
> (d) Invoices issued to the plaintiff in respect of insurance premiums for which the plaintiff is liable in an amount of approximately €20,000 have not been discharged. Mr. O'Connell suggested that there may be an explanation for this. I consider that he cannot be faulted for not being able to give the explanation, as this matter arose, as it were, "out of the blue" in cross-examination. In any event, what the Court is concerned with is the entitlement of the defendant to forfeit the 2009 Lease on foot of the forfeiture notice of 14th January, 2013. Non-payment of the invoices in question was not alleged to be a breach of covenant in that forfeiture notice.
>
> (e) The disclosure by Mr. O'Connell to Mr. Fitzpatrick and Mr. Morgan in August 2012 that Mr. Hickey and Mr. O'Connell had "found it necessary to cease trading through [the plaintiff] and Oreldrove" (*per* e-mail dated 28th August, 2012 from Mr. O'Connell to Mr. Morgan), gave rise to justifiable concerns on the part of Mr. Morgan, who characterised the unilateral action of Mr. Hickey and Mr. O'Connell as "a breach of trust". It emerged at the hearing that trading in the Demised Property had been carried on through a company called Bitrill Limited from May 2012. I consider it is not necessary, having regard to the determinations the Court has to make, to come to a conclusion as to the motivation for, and the implications of, that change, although, on an objective assessment, it would seem likely to compound the plaintiff's problems, rather than resolve them. In any event, it is not surprising that the defendant was not prepared to accede to the plaintiff's request to give its consent to an assignment of the 2009 Lease to, or the creation of a sub-lease in favour of, Bitrill Limited. However, as regards the Demised Property, that request was not pursued. By e-mail dated 6th September, 2012, Mr. O'Connell informed Mr. Morgan:
>
> > "We have now moved the Barge back to the [plaintiff] and instructed the solicitors to proceed with the licence applications for that premises. We are satisfied that that company will be able to meet its liabilities as they arise".
>
> (f) Counsel for the defendant also explored through the cross-examination of Mr. O'Connell the treatment of an historic debt due by the plaintiff to Balendale, which, as has been recorded earlier, is being wound up in a creditors' voluntary liquidation since 2012, in the financial statements of the plaintiff for the year ended 31st December, 2011, the objective being to demonstrate that the treatment was inappropriate, in support of the defendant's contention that the plaintiff is insolvent. As I understand it, the resolution of the debt issue as between the plaintiff and the liquidator of Balendale is ongoing. In the circumstances, it would be inappropriate to express any view as to the implications of that debt on the financial status of the plaintiff.

53. Despite the foregoing matters, the Court is not in a position to form a view as to the financial status of the plaintiff and, in particular, as to whether it is insolvent, as contended by the defendant. If the company is insolvent, the defendant, if it is an unpaid

creditor, has the options open to all unpaid creditors pursuant to the Companies Act 1963. Further, if the Court determines that the 2009 Lease continues in existence, in the future the defendant, as landlord, will have all of the options open to a landlord under that type of lease in the event of breach of the covenants in the lease by the plaintiff.

Legal issues to be addressed
54. On the basis of the pleadings and of the very comprehensive and helpful written and oral submissions made on behalf of the parties, I consider that the legal issues which the Court has to address are the following:

Issue (a)

Given that the consensus as to the reduction of the rent payable in respect of the Demised Property reached between Barge former landlord, the defendant's predecessor in title, and the plaintiff in April 2010 was not under seal, is the defendant's submission that –

> (i) there was no consideration for what the defendant characterised as a "concession" made by Barge former landlord in reducing the annual rent, and
>
> (ii) accordingly, the consensus did not give rise to an enforceable agreement correct?

Issue (b)

Alternatively, is it open to the Court to find that Barge former landlord secured adequate collateral advantages from the plaintiff, so that it can be deemed that there was consideration for the reduction of rent?

Issue (c)

If there was no consideration or collateral advantages given by the plaintiff for the reduction of the rent conceded by Barge former landlord, can the plaintiff rely on the equitable principle of promissory estoppel in support of its contention that the defendant was not entitled to increase the rent to €400,000 *per* annum on 16th November, 2012.

Issue (d)

If the answer to (c) is in the affirmative, what is the effect of the doctrine of promissory estoppel, having regard to the facts established? In particular, is the defendant not entitled to withdraw the reduction of rent –

> (i) until the next review date under the 2009 Lease, that is to say, 1st April, 2014, or
>
> (iii) without giving reasonable notice to the plaintiff, or
>
> (iv) having regard to the finding of fact made by the Court as to the intended duration of the reduction, for some other period.

Issue (e)

Was the 2009 Lease effectively forfeited by the defendant serving the forfeiture notice dated 14th January, 2013, or, alternatively, by the delivery of the defendant's counterclaim on 13th March, 2013?

Issue (f)

If the 2009 Lease was forfeited, is the plaintiff entitled to relief against forfeiture?

55. I will consider the law on each of the foregoing issues and its application to the facts of this case in turn.

Consideration: legal principles
56. The starting point of the defendant's submission that there is no enforceable agreement which binds it to a reduced annual rent of €273,225 in respect of the Demised Property until the next review date or at all is the application of the so-called rule in *Pinnel's* Case (1602) 5 Co Rep 117A. That rule, which has been much criticised over the past centuries, was given the *imprimatur* of the House of Lords in *Foakes v. Beer* (1884) 9 App Cas 605. The rule was explained as follows in the speech of Lord Selborne LC in *Foakes v. Beer* (at p. 612):

> "The doctrine, as stated in *Pinnel's Case*, is 'that payment of a lesser sum on the day' (it would of course be the same after the day), 'in satisfaction of a greater, cannot be any satisfaction for the whole, because it appears to the Judges, that by no possibility a lesser sum can be a satisfaction to the plaintiff for a greater sum'."

Lord Selborne, having quoted the formulation of the rule as stated in Coke Littleton, continued –

> "adding (what is beyond controversy), that an acquittance under seal, in full satisfaction of the whole, would (under like circumstances) be valid and binding."

While all of the Law Lords were critical of the rule in *Pinnel's Case*, as it had been accepted as part of the law in England for two hundred and eighty years, they considered that it could not be reversed.

57. An interesting and a particularly relevant aspect of the decision in *Foakes v. Beer* for present purposes is the reference in the speech of Lord Fitzgerald (at p. 629) to the application of the rule in *Pinnel's Case* in Ireland by reference to the judgment of Lefroy C.J., in *Corporation of Drogheda v. Fairtlough* 8 Ir. C.L.R. 98. The issue in that case arose from the reduction of the yearly rent payable under a lease granted by the Corporation of Drogheda. It is convenient to draw on the succinct summary of the facts of that case set out in Clark on *Contract Law in Ireland* (6th Ed., 2008) at p. 76. Premises were demised by the Corporation to a local clergyman in 1820 for a period of ninety nine years. The Corporation in 1837 passed a resolution agreeing to reduce the rent as a gesture to the tenant but before this could be done he died. The Corporation decided to carry out the resolution and in 1842 the old lease was surrendered by the clergyman's successor and a new lease was executed in his favour for the remainder of the ninety nine year period at a rent which was approximately half of the old rent. The rent was paid at the new rate until 1854 when the Corporation sued for arrears at the original higher rate from 1842 to 1854. The action succeeded.

58. Lefroy C.J. in his judgment delivered in 1858 outlined the common law principle as follows (at p. 110):

> ". . . the principle of the Common Law, which is, that payment merely of a less sum, when it is what we may call a parol payment or payment in fact, and not a payment in pursuance of a contract by deed, cannot, by the Common Law, be deemed to be any satisfaction whatsoever of a greater liquidated sum; but the law will allow the payment of a smaller sum to be a satisfaction of a greater liquidated sum, if there be, along with the payment of the smaller sum, any collateral advantage, however small, attending the transaction."

Counsel for the plaintiff emphasised the reference there to "any collateral advantage, however small". Later (at p. 114), elaborating on the concept of collateral advantage, Lefroy C.J. referred to "some further advantage accompanying the payment, and that advantage must be a reasonable one, and it must appear upon the face of the agreement". However, when it came to applying the law to the facts of the case before him, Lefroy C.J. stated (at p. 113):

> ". . . what is the consideration which the Corporation received for this agreement? They received a less rent; but, upon the other hand, the tenant was allowed to keep in his pocket the balance of the greater rent. The arrangement may have been for their mutual advantage; but unquestionably no peculiar advantage whatsoever resulted to the Corporation. There is no consideration for this alleged agreement; and even if there were a consideration – if a consideration could have been worked out of the circumstances, that consideration should have appeared upon the face of the agreement; for the rule of law is inflexible, that the consideration for an agreement must appear upon the face of the agreement, either expressly or by necessary inference, wherever, under the Statute of Frauds, an agreement is required to be in writing. Now there is no consideration here, express or implied."

59. The principle in *Foakes v Beer* was applied by the Court of Appeal of England and Wales in *In re Selectmove Ltd*. [1995] 1 WLR 474. The context there was a statutory demand for payment of a debt and the presentation of a petition to wind up the company. The company sought to resist the making of a winding up order, arguing that the debt on which the petition was based was disputed in good faith and substantial grounds on the basis that the petitioner, Inland Revenue, had accepted an offer by the company to pay its existing liabilities by instalments and future liabilities when they fell due. In fact, the Court of Appeal held that there had been no acceptance of the offer and no promise by Inland Revenue capable of founding an estoppel. Apart from that, the Court of Appeal held that company's promise to pay existing liabilities by instalments and future liabilities when they fell due could not constitute consideration, notwithstanding what the company submitted was the practical advantage to Inland Revenue that it was likely to recover more by that means than by putting the company into liquidation. Therefore, even if the company's offer had been accepted, the agreement was unenforceable for want of consideration.

60. In the *Selectmove Ltd*. case, the Court of Appeal distinguished a decision of the Court of Appeal in *Williams v. Roffey Brothers & Nicholls (Contractors) Ltd*. [1991] 1 QB 1, in which the Court of Appeal had upheld a decision at first instance that an agreement by the defendant main contractor to pay the plaintiff sub-contractor an additional sum over and above the contract price to complete the sub-contract work was enforceable and did not fail for lack of consideration. Rejecting a submission that the decision in that case should be followed, Peter Gibson L.J. stated as follows in *In re Selectmove Ltd*. (at p. 418):

> "When a creditor and a debtor who are at arm's length reach agreement on the payment of the debt by instalments to accommodate the debtor, the creditor will no doubt always see a practical benefit to himself in so doing. In the absence of authority there would be much to be said for the enforceability of such a contract. But that was a matter expressly considered in *Foakes v. Beer* yet held not to constitute good consideration in law. *Foakes v. Beer* was not even referred to in *Williams v. Roffey Bros*. . . . and it is in my judgment impossible, consistently with the doctrine of precedent, for this court to extend the principle of *Williams's* case to any circumstances governed by the principle *of Foakes v. Beer*, ... If that extension is to be made, it must be by the House of Lords or, perhaps even more appropriately, by Parliament after consideration by the Law Commission."

61. The status of the rule in *Pinnel's* Case in this jurisdiction was considered by the High Court (Keane J.) in *Truck and Machinery Sales Ltd. v. Marubeni Komatsu* [1996] 1 I.R. 12, in which the plaintiff debtor sought to restrain the presentation of a petition to wind it up by the defendant creditor on the basis that it had substantial grounds on which it could in good faith dispute the debt, namely, that a fax sent by the defendant to the plaintiff's banker constituted a waiver of the balance of the debt or, alternatively, the defendant was estopped, by virtue of the facts, from presenting the petition. In the fax the defendant informed the plaintiff's banker that it had told the plaintiff that, provided a part payment in an amount specified was paid to the defendant promptly, it would wait for the balance until the happening of one or two events. In addressing the submission made on behalf of the defendant that there was no consideration to support the alleged agreement to waive the debt, Keane J. stated (at p. 28):

> "It has been settled law since the decision of the House of Lords in *Foakes v. Beer* . . . that a promise to pay part of a debt is not good consideration in law. Its applicability in circumstances such as the present was considered by the English Court of Appeal in *In re Selectmove Ltd*. . . ., where a company claimed that it had come to an arrangement with the Revenue as to the payment of arrears. The Court of Appeal unanimously held that it was bound by the decision in *Foakes v. Beer* to reject the argument that a promise to pay a sum which the debtor was already bound by law to pay to the promisee could afford any consideration to support the contract."

Having outlined the basis on which Peter Gibson L.J. refused to follow the other decision of the Court of Appeal, *Willams v. Roffey Brothers & Nicholls (Contractors) Ltd*., Keane J. continued (at p. 29):

> "In the present case, it has not been urged upon me that I should depart from the authority of *Foakes v. Beer* . . . (which itself, it should be remembered, was merely the application of a principle which goes back to *Pinnel's Case* . . .). I am, accordingly, satisfied that I should adopt in this case the same approach as that taken by the Court of Appeal in *In re Selectmove Ltd*."

Although counsel for the plaintiff submitted that this Court should adopt the approach adopted by the Court of Appeal in *Williams v. Roffey Brothers & Nicholls (Contractors) Ltd*. to the application of the rule in *Pinnel's* Case, rather than the approach adopted in *Selectmove Ltd*., I have come to the conclusion that it is not open to the Court to do so, because to do so would be a departure from settled law.

62. It is beyond question that the rule in *Pinnel's Case* still represents the law in Ireland and this Court is bound by it, although the introduction of a new element into the relationship of the debtor and creditor, such as the collateral advantage to the creditor may remove the relationship from the scope of the rule. Moreover, the application of the doctrine of promissory estoppel may obviate an inequitable outcome to which the application of the rule in *Pinnel's Case* would otherwise give rise. As Arden L.J. stated, albeit obiter,

apropos of the doctrine of promissory estoppel in her judgment in the Court of Appeal of England and Wales in *Collier v. P. & M.J. Wright (Holdings) Ltd.* [2008] 1 WLR 643 (at p. 659):

> "This part of our law originated in the brilliant obiter dictum of Denning J in the *High Trees case* [1947] KB 130. To a significant degree it achieves in practical terms the recommendation of the Law Revision Committee chaired by Lord Wright MR in 1937."

The recommendation of the Law Revision Committee referred to in that passage was to reverse the rule in *Pinnel's Case* by statute, but the recommendation has not been implemented in the U.K.

Promissory estoppel: the legal principles

63. The High Trees case referred to by Arden L.J. is *Central London Property Trust Limited v. High Trees House Ltd*. [1947] 1 KB 130. The facts in that case are significant for present purposes, because they bear a close resemblance to the facts in this case. By a lease made in 1937 a block of flats was let to the defendant for a term of ninety nine years at a yearly rent of £2,500. In the early part of 1940, owing to war conditions then prevailing, only a few of the flats in the block were let to tenants and it became apparent that the defendant would be unable to pay the rent reserved by the lease out of the rents of the flats. Following discussions, in January 1940 a letter was written by the plaintiff to the defendant confirming that the ground rent of the premises would be reduced from £2,500 to £1,250 as from the beginning of the term. The defendant thereafter paid the reduced rent. By the beginning of 1945 all the flats were let but the defendant continued to pay only the reduced rent. In September 1945 the plaintiff wrote to the defendant claiming that rent was payable at the rate of £2,500 a year. Subsequently, the plaintiff initiated "friendly proceedings" in which it claimed the difference between the rent of £2,500 and the rent of £1,250 for the quarters ending September and December 1945. The defendant's defence was that the agreement for the reduction of the ground rent operated during the whole term of the lease and, as alternatives, that the plaintiff was estopped from demanding rent at the higher rate or had waived its right to do so to the date of the letter in September 1945. The first element of the decision of Denning J. is summarised as follows in the headnote in the report:

> ". . . where parties enter into an arrangement which is intended to create legal relations between them and in pursuance of such arrangement one party makes a promise to the other which he knows will be acted on and which is in fact acted on by the promisee, the court will treat the promise as binding on the promisor to the extent that it will not allow him to act inconsistently with it even although the promise may not be supported by consideration in the strict sense and the effect of the arrangement made is to vary the terms of a contract under seal by one of less value."

64. On the facts before him, Denning J. held that the arrangement made between the plaintiff and the defendant in January 1940 was one which fell within that category. In analysing the scope of the promise Denning J. stated (at p. 135):

> "I am satisfied on all the evidence that the promise here was that the ground rent should be reduced to £1,250 a year as a temporary expedient while the block of flats was not fully, or substantially fully let, owing to the conditions prevailing. That means that the reduction in the rent applied throughout the years down to the end of 1944, but early in 1945 it is plain that the flats were fully let, and, indeed the rents received from them . . ., were increased beyond the figure at which it was originally contemplated that they would be let. At all events the rent from them must have been very considerable. I find that the conditions prevailing at the time when the reduction in rent was made, had completely passed away by the early months of 1945. I am satisfied that the promise was understood by all parties only to apply under the conditions prevailing at the time when it was made, namely, when the flats were only partially let, and that it did not extend any further than that. When the flats became fully let, early in 1945, the reduction ceased to apply."

On the foregoing basis Denning J. held that rent was payable at the full rate for the quarters ending September and December 1945.

65. Denning J. went on to state (at p. 136) that, if the case had been one of estoppel (meaning, as I understand it, a case based on a representation as to an existing fact rather than a promise or a representation as to intention in relation to the future), it might be said that in any event the estoppel would cease when the conditions to which the representation applied came to an end, or it also might be said that it would only come to an end on notice, but, in either case, it was only a way of ascertaining the scope of the representation.

66. In *Truck and Machinery Sales Ltd. v. Marubeni Komatsu Ltd.*, Keane J recognised the existence of the doctrine of promissory estoppel in this jurisdiction in the following passage in his judgment (at p. 29):

> "It is also clear that, where parties to a contract enter into a course of negotiations which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, the person who might otherwise have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have taken place between the parties. This doctrine, sometimes referred to as 'promissory estoppel', first appeared in English law in *Hughes v. Metropolitan Railway Co*. (1877) 2 App. Cas. 439 and was given renewed life by *Central London Property Trust Ltd. v. High Trees House Ltd*. . . .. A not dissimilar approach was adopted by the Supreme Court in *Webb v. Ireland* [1988] I.R. 353."

On the facts before him, Keane J. stated that, when one read the entire correspondence, it was clear beyond argument that the defendant at no stage waived the balance of the purchase price due to it, nor was the plaintiff left under any illusion that it was being waived. To hold that the defendant should be estopped from taking legal proceedings to enforce this right would, in the light of the correspondence, be a negation of equity.

67. The development of the doctrine of promissory estoppel is briefly outlined in Delany on *Equity and the Law of Trusts in Ireland* at page 756 *et seq*. Delany makes the point that one of the guiding principles which arguably has circumscribed the development of the doctrine of promissory estoppel has been that it should not undermine the requirement of consideration. Its operation has been confined to situations where a pre-existing contractual relationship or at least a relationship which gives rise to legal rights and obligations exists. Of course, the landlord and tenant relationship between the defendant and the plaintiff here is a situation in which there is a pre-existing contractual and legal relationship. Apropos of the decision in *High Trees*, Delany makes the following observations (at para. 757):

> "While this '*High Trees*' principle appeared to be potentially far-reaching in effect, its scope was circumscribed by the subsequent decision of the English Court of Appeal in *Combe v. Combe*, where Denning L.J. himself stated that it did not 'create new causes of action where none existed before. It only prevents a party from insisting upon his strict legal rights, when it should be unjust to allow him to enforce them, having regard to the dealings which have taken place

between the parties'. It was also in the *Combe* decision that Birkett L.J. adopted the now famous expression used by counsel that the *High Trees* doctrine was one which should be 'used as a shield and not as a sword'. This reasoning was adopted by Barron J. in *Chartered Trust Ireland Ltd. v. Healy*, where he held that estoppel should not confer a cause of action upon a plaintiff."

Although estoppel is pleaded in the plaintiff's statement of claim, in substance, the plaintiff is advocating the use of the doctrine of promissory estoppel by this Court as a shield against the defendant's attempt to forfeit the 2009 Lease on the basis of failure of the plaintiff to pay rent at the rate of €400,000 *per* annum from 16th November, 2012.

68. As Delany remarks in the course of her brief outline of the doctrine, it is often considered in a contractual context and fuller treatment of it is to be found in leading texts in that area, citing Clark *op. cit*. and McDermott on *Contract Law* (2001). Having considered both, I think it is true to say there is little divergence as to the current state of Irish law on the doctrine between the authors. McDermott lists the key ingredients of promissory estoppel as being the following:

(a) the pre-existing legal relationship between the parties;

(b) an unambiguous representation;

(c) reliance by the promisee (and possible detriment);

(d) some element of unfairness and unconscionability;

(e) that the estoppel is being used not as a cause of action, but as a defence; and

(f) that the remedy is a matter for the Court.

69. As has been already noted, ingredient (a) and, in substance, ingredient (e) are present in this case. As regards ingredient (b), that requirement has been reiterated by the Supreme Court as that there must be "a clear unequivocal promise or representation" (*per* judgment of Clarke J. in *Furey v. Lurgan-ville Construction Co. Ltd*. [2012] IESC 38 at para. 5.3). As regards ingredient (c), Clark observes (at p. 80) that whether it is necessary for the promisee to show that the promise caused him to act to his detriment had not been considered by the House of Lords by 2008, but he refers to two decisions of the High Court in this jurisdiction where detriment has been held to be an essential requirement. In applying the law to the facts of this case, it will be necessary to determine whether ingredients (b), (c) and (d) are present.

70. The authors are also *ad idem* on the effect of the estoppel: it suspends, not extinguishes, the promissor's rights (*per* McDermott at para. 2.127); its effect is to suspend not to give up altogether a legal right, the right to resile from the promise being available where reasonable notice is given (*per* Clark at p. 79). Applying the suspensory effect of the doctrine to the various circumstances which may arise is the most difficult aspect of the application of the doctrine. In the U.K. textbooks, the terminology used to describe the effect of the doctrine tends to be to describe it as being either temporary or permanent, depending on the factual circumstances.

71. For instance, in Spencer Bower on *The Law Relating to Estoppel by Representation* (4th Ed.), the editors stated (at p. 486) under the heading "Relief":

"The effect of the doctrine of promissory estoppel can be either temporary or permanent depending on the terms of the promise and the detrimental reliance upon it. It is often said that the doctrine is suspensory or suspensive of rights and only exceptionally does it operate to extinguish rights altogether. But there can be an element of ambiguity in those terms. . . . Again, where a landlord is held to have waived payment of rent in full for a specified period of time, the effect of the doctrine can be described as either temporary or permanent. It is temporary in the sense that the concession is temporary and the parties must resume their former position. But it is permanent in the sense that the landlord may have waived payment of some part of the rent forever and agreed to accept a lesser sum in satisfaction of the whole. This position can be contrasted with the situation in which a creditor agrees to permit the debtor to pay in instalments. Here the effect of the promise is truly temporary because all that the creditor agrees to give the debtor is time."

72. In Snell's *Equity* (32nd Ed.) the editors deal with the effect of promissory estoppel and, in particular, the relief which can be afforded when it is established as follows (at para. 12 – 014):

"The effect of the doctrine of promissory estoppel can be either temporary or permanent. But it is usually temporary. Where the promise or assurance is more than a temporary concession, [the promisor] will be entitled to withdraw the concession in accordance with its terms. Even where the promise or assurance cannot be construed as a temporary concession [the promisor] will usually be entitled to withdraw the promise on giving reasonable notice and the promise will only become final and irrevocable if [the promisee] cannot resume his or her former position. In this sense the doctrine of promissory estoppel has much in common with the principle of waiver of rights which permits a party to revoke any waiver upon reasonable notice to the other party."

In relation to the third sentence in that passage, the editors state in a footnote:

"Both *Hughes v. Metropolitan Rly. Co. and High Trees* . . . can be regarded as cases of this kind (although in *High Trees* the receiver was only seeking to recover the rent paid after the concession had been withdrawn)."

In relation to the penultimate sentence in that passage, the editors cite, *inter alia, Ajayi v. RT Briscoe (Nigeria) Ltd*. [1964] 1 WLR 1326, quoting the following passage from the judgment of the Privy Council delivered by Lord Hodson at p. 1330:

"This equity is, however, subject to the qualifications

(1) that the other party has already altered his position;

(2) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position; and

(3) the promise only becomes final and irrevocable if the promisee cannot resume his position."

In *Association of General Practitioners Ltd. v. Minister for Health* [1995] 1 I.R. 382, O'Hanlon J. stated that (at p. 394) that the doctrine of equitable or promissory estoppel is subject to the same qualifications, citing *Halsbury's Laws of England* (4th Ed.) (vol. 16) at para. 1071 and the cases there referred to.

73. The decision in the *Ajayi* case was on an appeal from the Federal Supreme Court of Nigeria to the Privy Council. The facts of that case were that the defendant was defending a claim by the plaintiff for unpaid instalments under two hire purchase agreements relating to a number of motor lorries on the basis that, having had trouble with the lorries, the defendant relied on a letter from the plaintiff which stated, *inter alia*, that it was agreeable to the defendant withholding instalments due on the lorries as long as they were withdrawn from active service. After that letter the defendant had "laid up" the lorries, most of them with the plaintiff, and he contended that the plaintiff could not enforce payment pending the return of the lorries to service. He alleged that no notice had been given to him that the lorries were available for active service and that, as a result of the plaintiff's promise, he had altered his position in a number of specified respects. On the facts, the Privy Council found that the defendant had not made good the equitable defence, for the evidence did not support his allegation that he had altered his position, and it could not be said to have been proved that the lorries were not made available to him after they had been repaired.

74. The facts in the *High Trees* case and the facts in the *Ajayi* case, both of which involved ongoing legal or contractual relationships, illustrate the distinction between the two cases and, consequently, the distinction between the situation covered by the third sentence and the situation covered by the penultimate sentence in the passage from Snell quoted above. In my view, it is that, if the Court can make a finding as to the terms on which there was consensus between the promisor and the promisee as to when the concession would cease, the promisor is entitled to withdraw the condition in accordance with those terms; otherwise, the concession may be withdrawn on giving reasonable notice, unless the promisee can demonstrate that he cannot resume his former position. It would hardly be consonant with fairness and equity, if the promisor could ignore the terms, express or implied, as to the duration of the concession, and terminate it at will or on notice, even on reasonable notice.

Application of legal principles to facts: consideration/collateral advantage

75. It was submitted on behalf of the plaintiff that, as the consensus reached between Barge former landlord and the plaintiff in April 2010 concerned future obligations to pay rent, rather than an existing debt, the rule in *Pinnel's Case* had no application and the consensus amounted to an enforceable agreement. Counsel for the defendant countered that submission by arguing that the distinction made was not a valid distinction and in that context he relied on, *inter alia*, the decision in *Corporation of Drogheda v. Fairtlough*. In my view, on the basis of the authorities, the defendant's counter-argument is clearly correct. It is immaterial that the consensus related to future, rather than existing, liability on the part of the plaintiff.

76. While another proposition advanced on behalf of the plaintiff, namely, that a court applying contract law will not scrutinise the adequacy of consideration is undoubtedly correct, the issue with which this Court is concerned is not whether there was adequate consideration. The Court's task is to ascertain whether there was any consideration and, as Lefroy C.J. had to do, to ask the question: "what is the consideration?" In support of the plaintiff's contention that it did give consideration for the reduction in rent, counsel for the plaintiff relied on a number of factors.

77. First, it was submitted that the defendant secured the continued commitment to the Demised Property of Mr. Hickey operating through the plaintiff, an experienced tenant with a track record of business success. Further, the defendant avoided the disruption which would have ensued if there had been a change of tenant. I agree with the submission made by counsel for the defendant that that factor, which I have no doubt was present, goes to the motivation for, and demonstrates the rationale behind, the defendant's willingness to reduce the rent. In this context, counsel for the defendant referred to the reference to Lord Blackburn's criticism of the rule in *Pinnel's* Case in *Foakes v. Beer*, which was considered in *Re Selectmove*. There, Peter Gibson L.J. stated (at p. 479):

> "Lord Blackburn expressed his conviction, at p. 622, that
>
> > 'All men of business, whether merchants or tradesmen, do every day recognise and act on the ground that prompt payment of a part of their demand may be more beneficial to them than it would be to insist on their rights and enforce payment of the whole.'
>
> Yet it is clear that the House of Lords decided that a practical benefit of that nature is not good consideration in law."

It may have made good sense for the Quinn Group to concede the reduction of rent which took effect from April 2010 and some practical benefits may have accrued to the Quinn Group lessors in consequence. However, the reality of the situation is that the plaintiff, as lessee of the Demised Property, assumed no additional burden, whether monetary or otherwise, and undertook no additional obligation to Barge former landlord, as lessor.

78. Secondly, it was submitted that, as part of the plaintiff's commitment to the Demised Property, it made improvements and capital investments thereto by way of the improvement and upgrading works executed by the plaintiff subsequent to April 2010, which have been outlined earlier, and incurred expenditure in so doing, which will ultimately benefit the defendant as landlord. Even if the plaintiff had no existing obligation to effect all or some of the improvements which were carried out, the evidence does not establish that, as part of the "deal" for the reduction of the rent reserved by the 2009 Lease in respect of the Demised Property the plaintiff entered into a commitment with Barge former landlord to execute the works in question. I find, as a matter of fact, that no such commitment was given by the plaintiff.

79. In summary, the evidence establishes that the plaintiff gave nothing different or additional to, and undertook no new obligation for the benefit of, Barge former landlord in return for the reduction of the rent payable in respect of the Demised Property by 32%. Accordingly, I hold that no consideration moved from the plaintiff for the reduction of rent. Further, I find that no collateral advantage or benefit, whether big or small, was given by the plaintiff to the defendant for the reduction of rent. The plaintiff continued to be entitled to exactly the same rights and benefits under the 2009 Lease after April 2010 as it had been prior to April 2010, but at a considerably lesser rent.

Answer to issues (a) and (b)

80. The answer to issue (a) accordingly is that the defendant's submission that there was no consideration for the concession made by Barge former landlord in reducing the rent of the Demised Property and that, accordingly, the consensus between Barge former landlord and the plaintiff did not give rise to an enforceable agreement is correct.

81. The answer to issue (b) is that the Court cannot find that Barge former landlord secured adequate collateral advantages or benefits from the plaintiff, so that it can be deemed that there was consideration for the reduction of the rent of the Demised Property.

Application of legal principles: promissory estoppel
82. In line with what was stated earlier, the focus now will be on the presence or otherwise of ingredients (b), (c) and (d) identified by McDermott in respect of which the following conclusions apply:

> (i) As regards ingredient (b), I find that there was a clear unequivocal promise by Barge former landlord, the defendant's predecessor, to the plaintiff that the rent payable in respect of the Demised Property would be reduced to €273,225 *per* year and, as I have found, the consensus between both parties was that the reduction would continue while the business carried on by the plaintiff in the Demised Property was adversely affected by prevailing economic circumstances.
>
> (ii) As regards ingredient (c), I am satisfied that the plaintiff did act in reliance on that promise. The plaintiff, through its directors and shareholders, expended time, energy and money in maintaining the business carried on in the Demised Property and in improving and upgrading the Demised Property at a time when proprietors of licensed premises were confronting unprecedented difficulties. While there was very little, if any, positive returns for their efforts, the directors and shareholders of the plaintiff acted in the belief that the lessor would abide by its promise. Insofar as it is necessary for the plaintiff to demonstrate that the promise to reduce the rent payable in respect of the Demised Property caused it to act to its detriment, on balance, I consider that, by reason of the same conduct since 2010, the plaintiff has so demonstrated.
>
> (iii) As regards ingredient (d), I have come to the conclusion that there would be a very strong element of unfairness and unconscionability present if the defendant was allowed by the combined operation of –
>
> > (I) the giving by the defendant on 16th November, 2012 of purported notice to the plaintiff peremptorily withdrawing the reduction of rent with immediate effect; and
> >
> > (II) the service of the second forfeiture notice on the plaintiff on 14th January, 2013 on the basis that arrears of rent had accrued since 16th November, 2012 on foot of the notice of that date purportedly withdrawing the rent reduction, to forfeit the 2009 Lease and recover possession of the Demised Property.

The plaintiff having complied with the first forfeiture notice and the defendant having confirmed its withdrawal of that forfeiture notice by letter dated 9th November, 2012, the conduct of the defendant just seven days later, whatever its motivation, was grossly unfair and it would be inequitable, having regard to the dealings which took place over a period of almost two years, if the defendant was allowed to enforce its strict rights as lessor under the 2009 Lease.

Answer to issue (c)
83. Accordingly, the answer to issue (c) is that the plaintiff can rely on the equitable principle of promissory estoppel in support of its contention that the defendant was not entitled to increase the rent to €400,000 *per* annum on 16th November, 2012.

Effect of promissory estoppel on the facts
84. The effect of the application of the doctrine of promissory estoppel to the facts of this case is that the defendant is not entitled to withdraw the concession it made to accept a reduced rent of €273,225 *per* annum in respect of the Demised Property other than in accordance with the terms of the consensus which was reached between the parties, which was that the reduction was to continue while the business carried on by the plaintiff in the Demised Property was adversely affected by prevailing economic circumstances. On the evidence, I find that there has been no material change to date on the capacity of the plaintiff to generate turnover in the business carried on in the Demised Property since 2009, on the basis of which the reduction in rent was sought by the plaintiff in early 2010. On the evidence based on the financial statements of the plaintiff for the years 2009, 2010 and 2011, ending on 31st December in each year, and on management accounts for the year ended 31st December, 2012, the turnover generated in each year was as follows:

YEAR	TURNOVER
2009: .	€2.577m
2010: .	€2.418m
2011: .	€2.428m
2012: .	€2.450m

The projection for the year 2013, based on the 2009 figure, is €2.450m.

85. While this fact can have no bearing on the Court's determination of the issues which have to be determined in this case, in my view, the rent of €400,000 *per* annum in respect of the Demised Property which was payable before the reduction must have exceeded the market rent which could have been obtained for the Demised Property in 2010 to a very considerable degree. It is also reasonable to infer that it exceeded what could have been a sustainable rent having regard to the turnover which the business carried on by the plaintiff in the Demised Property was capable of generating. In this connection, Mr. Morgan's evidence during cross-examination is of interest. While he would not accept that the reduced annual rent of €273,225 was necessarily above market rent at any time during 2010 or 2011, he did testify that in early 2012 he had sought independent advice in relation to what the market rent should be and he was told that, typically, it would be in the region of 10% to 11% of total turnover. On the basis of the evidence, I have no doubt that a yearly rent in respect of the Demised Property greater than €273,225 is not currently sustainable having regard to the manner in which the plaintiff's business carried on in the Demised Property has been and continues to be affected by prevailing economic circumstances.

Answer to issue (d)
86. The answer to issue (d), accordingly, is that the effect of the application of the doctrine of promissory estoppel to the facts of this case is that, on the basis of the finding of fact made, the defendant is restrained in equity from withdrawing the reduction of the yearly rent reserved by the 2009 Lease in respect of the Demised Property to €273,225 while the business carried on by the plaintiff in the Demised Property remains adversely affected by prevailing economic circumstances in the manner it was affected in April 2010 and is incapable of generating turnover to sustain an annual rent above that level.

Forfeiture: issues (e) and (f)
87. The sole basis on which the defendant purported to forfeit the 2009 Lease by virtue of the second forfeiture notice dated 14th

January, 2013, was that the plaintiff was in arrears of rent due after 16th November, 2012 in consequence of the withdrawal of the rent reduction effective from that date. As I have found, the defendant was restrained in equity from resiling from its predecessor's promise and from withdrawing the reduction of rent in November 2012. Accordingly, the purported forfeiture notice was ineffective. The answer to issue (e) is that the lease was not effectively forfeited either by the forfeiture notice dated 14th January, 2013 or the delivery of the defendant's counterclaim on 13th March, 2013.

88. In the circumstances, issue (f), namely, whether the plaintiff is entitled to relief against forfeiture, does not arise. Accordingly, the Court does not have to grapple with the submission made on behalf of the defendant that, on the issue of relief against forfeiture, the Court would be entitled to have regard to the persistent failures of the plaintiff to pay the rent due, the rates, and its attempt to assign the lease without the consent of the defendant, which alleged defaults, in any event, in my view, are not entirely consistent with the evidence. Aside from that, glaring incongruity underlies the position adopted on each side. On the one hand, Mr. Morgan's evidence on re-examination was that, if the plaintiff pays the rent of €400,000 *per* annum, he would be happy to leave the plaintiff in possession of the Demised Property. On the other hand, if the issue of relief against forfeiture was alive, the Court might derive some comfort from the assurance given by counsel for the plaintiff, in response to a question from the Court, that the plaintiff would seek relief against forfeiture, even if the Court was to hold that the rent is payable at the rate of €400,000 *per* annum until the next review date.

Orders

89. There will be orders in the following terms;

> (a) an order restraining the defendant its servants and agents from taking any steps on foot of the purported forfeiture notice dated 16th January, 2013 to forfeit the 2009 Lease or to re-enter and take possession of the Demised Property;
>
> (b) an order restraining the defendant from withdrawing the reduction of the annual rent of €400,000 reserved by the 2009 Lease to €273,225 effected on 8th April, 2010 while the business carried on by the plaintiff in the Demised Property continues to be adversely affected by prevailing economic circumstances in the manner it was affected in April 2010;
>
> (c) an order dismissing the defendant's counterclaim.