Neutral Citation Number: [2010] IEHC 413

THE HIGH COURT

2010 9631 P

BETWEEN

MICHAEL O'MAHONY

PLAINTIFF

AND

EXAMINER PUBLICATIONS (CORK) LIMITED, THOMAS CROSBIE HOLDINGS LIMITED AND THOMAS CROSBIE PRINTERS LIMITED

DEFENDANTS

Judgment of Miss Justice Laffoy delivered on the 5th day of November, 2010.

1. Proceedings and application

1.1 These proceedings were initiated by a plenary summons which issued on 21st October, 2010. Of some significance is that the relief claimed in the endorsement of claim on the plenary summons was damages for breach of contract, misrepresentation, wrongful dismissal and negligence together with "if necessary, interim and/or interlocutory relief …".

1.2 The application before the Court is for the following interlocutory reliefs:

(a) an order restraining the defendants from dismissing the plaintiff pending the trial of the action from his position of employment; and

(b) an order directing the defendants to continue remunerating the plaintiff as heretofore pending the trial.

The following evidence is before the Court;

(i) the grounding affidavit of the plaintiff sworn on 20th October, 2010;

(ii) the affidavit of Barry Colgan, who has described himself as "Group Human Resources Manager employed by" the third defendant (Printers) sworn on 27th October, 2010;

(iii) the affidavit of the plaintiff sworn on 28th October, 2010;

(iv) the affidavit of Cliona Kenny, solicitor in the firm of Ernest J. Cantillon and Company, the solicitors on record for the plaintiff, sworn on 28th October, 2010; and

(v) the affidavit of Mr. Colgan sworn on 28th October, 2010.

1.3 At the hearing of the application on 29th October, 2010 counsel for the plaintiff sought to amend the endorsement of claim on the plenary summons to seek the following reliefs:

(a) a declaration that there has at all material times subsisted between the plaintiff and the defendants a contract that in the event the plaintiff's position in their employ became redundant, they would not dismiss him but would redeploy him in their employ;

(b) specific performance of a contract whereby the defendants agreed that in the event that the plaintiff's position in their employ became redundant, they would not dismiss him but would redeploy him in their employ; and

(c) interim interlocutory and/or permanent injunctions restraining the defendants from dismissing the plaintiff from their employ at any time prior to the specific performance of the said contract.

Counsel for the defendants objected to the application to amend the plenary summons on substantive rather than procedural grounds, in that he did not take issue with the fact that there was not a formal motion before the Court on notice to the defendants seeking such relief. I will return to the application for amendment at the end of this judgment.

2. Factual background

2.1 Unfortunately, there are gargantuan conflicts of evidence on the affidavits in relation to the fundamental issues which arise on this application and, in particular, as to:

(i) who is, and who has been since 2004, the plaintiff's employer,

(ii) whether in 2008 the then managing director of the group of companies of which the companies named as defendants herein form part, which I will refer to as the Examiner Group, Anthony Dinan, committed the defendants to redeploy the plaintiff in the Examiner Group in the event of his position becoming redundant, and

(iii) what the role of the plaintiff has occupied within the Examiner Group since 2008 and the implications of that in the light of the events of August 2010.

Before outlining the evidence which gives rise to those conflicts, I propose setting out the facts which are not in dispute.

2.2 For present purposes I accept Mr. Colgan's averments in relation to the status of each of the defendants. The second defendant (Holdings) is the group company for twenty six companies, including the first defendant (Examiner) and the third defendant (Printers). Mr. Colgan has averred that Examiner has three hundred employees and currently Printers has thirteen employees. There is only one employee of Holdings. Mr. Colgan has explained that this is the historic structure in which various services were provided by Holdings but it did not generate any income. Printers is the services company for the Group, and was structured in this way for legal and taxation reasons.

2.3 The plaintiff commenced employment with Examiner thirty years ago in 1980 when he was seventeen years of age and just out of school. His original employment was as a clerk and he worked in various departments between 1980 and 1993 when he was assigned to Human Resources/Payroll. With encouragement from Mr. Dinan, who was in charge of the Human Resources/Payroll department at the time, the plaintiff embarked on further education in the human resources area, obtaining a Master's degree in 1998. After that, he was appointed to the position of Training Manager at Examiner and he remained in the employment of Examiner. His evidence is that around 2001/2002 he was told he was "being sent over" to Holdings and that he was to report to Mr. Colgan as Group Human Resources Manager. The plaintiff continued to be employed by Examiner. Counsel for the plaintiff has sought to attach weight to the fact that the plaintiff was sent over to Holdings rather than being requested to go.

2.4 The controversy as to who the plaintiff's current employer is centres on what happened in 2004. Mr. Colgan's position is that with effect from 1st October, 2001 the plaintiff was transferred to Printers and has at all times since that date been an employee of Printers. He has averred that this was not merely an administrative change. It was carried out for taxation reasons and at all times the plaintiff was aware of, and acquiesced in, the move, which affected a number of other persons. Mr. Colgan has acknowledged that the plaintiff's terms and conditions of employment were preserved at the time, in particular his pension entitlements. He retained his previous employment service and was treated as such and his membership of the defined benefit pension scheme was preserved. However, according to Mr. Colgan, there were some changes, which arose after negotiation, for instance, he received a 12% pay increase and agreed to no longer qualifying for the Examiner profit sharing bonus. From thereon his salary and his bonus were to be performance based. The position adopted by the plaintiff in his grounding affidavit is that he is not employed by Printers. In his grounding affidavit he averred that he was employed "by the Examiner Group and/or [Examiner]". As I understand it, the Examiner Group is not a legal entity as such. The plaintiff's response to Mr. Colgan's version of the change which occurred in 2004 is that he was not requested to move to Printers. His position is that he was simply informed that Printers would henceforth pay his salary, which for the two years since his move to Holdings had been paid by Examiner. He was not given any choice in relation to the matter, nor were any legal or other implications of the change brought to his notice.

2.5 The plaintiff has also commented on the defendants' failure to supply him with a written statement of the terms of his employment. There is certainly no evidence before the Court that the plaintiff's employer, whoever it is, complied with the provisions of the Terms of Employment (Information) Act 1994. The Court cannot resolve the conflict as to who the plaintiff's employer has been since 1st October, 2004 and is now. Having said that, I must express surprise that the state of the evidence is such that the Court cannot resolve the conflict. What can be said is that, having regard to the evidence before the Court, insofar as it is ultimately relevant to the dispute between the parties, the plaintiff has not made out a strong case that he is likely to succeed in his contention that he is not an employee of Printers, if this matter goes to full trial.

2.6 As regards what happened in 2008, the state of the evidence is as follows:

(a) The plaintiff has averred in his grounding affidavit that he was called to a meeting with Mr. Dinan, who at the time was the Managing Director, presumably of the Examiner Group. At that meeting he was told that the training budget would be significantly reduced and that he would work in the Accounts and Payroll Department, and he was to be trained in general accounts. He was very shaken and he asked Mr. Dinan: "Will I be safe?" Mr. Dinan's reply was: "You will be all right". The plaintiff then averred as follows:

> "Your deponent understood Anthony Dinan told me that if the new role did not work out I would be redeployed back to the Examiner on the same terms and conditions as I then enjoyed. I was relieved and of course agreed to that proposal."

(b) In his first affidavit, Mr. Colgan has disputed the plaintiff's version, *inter alia*, in reliance on what happened at the meeting of 30th August, 2010 referred to later and what the plaintiff asserted in his letter of 14th September, 2010 referred to later. It has to be commented that Mr. Colgan has fallen short of proper disclosure to the Court in that affidavit in relation to his attempts to ascertain Mr. Dinan's version of what happened in 2008, Mr. Dinan having left his position with the Examiner Group.

(c) In her affidavit, which is unquestionably hearsay, but which counsel for the defendants did not object to being admitted in evidence on this interlocutory application, Ms. Kenny has averred as follows –

> "Mr. Dinan has confirmed to me that he advised Mr. Colgan on the 19th October, 2010 that while he could not put his position in writing for legal reasons, his recollection was very similar to the plaintiff's account and his evidence would be in line with the plaintiff's account of the agreement made in 2008."

(d) In his second affidavit, Mr. Colgan has acknowledged that he received a telephone call from Mr. Dinan while he was driving on 19th October, 2010. The line was not very clear and he was on "hands free" at the time. However, he records what Mr. Dinan stated as follows:

> "Mr. Dinan said that out of courtesy he wanted me to know that if he was making a statement it would be something to the effect that if he had still been group MD he would have intended to redeploy [the plaintiff] to the Examiner if his position at [Holdings] had become redundant."

Mr. Colgan has averred that that was the extent of the conversation and, for the avoidance of doubt, he has averred that Mr. Dinan did not tell him that he had given a commitment to the plaintiff that he would redeploy him in the event of his redundancy.

2.7 There is a certain measure of consensus as to what transpired in 2010 which led to these proceedings. On 10th August, 2010, Mr. Colgan told the plaintiff that his position had become redundant. Mr. Colgan has averred that training has disappeared as a facet of employment in the Examiner Group due to financial constraints. The training budget in 2008, before cutbacks, was approximately €500,000, but spending on training in 2009 and 2010 was "almost zero". That the plaintiff was being made redundant was confirmed in a letter of 26th August, 2010 from Mr. Colgan to the plaintiff. In that letter, Mr. Colgan confirmed that "the position of Group Training Manager is being made redundant and that your employment within the Group will terminate on Friday, 22nd October, 2010." That letter was written by Mr. Colgan "for and on behalf of" Holdings. Counsel for the plaintiff made the point that, even on the evidence of Mr. Colgan, the plaintiff was not employed by Holdings, which is correct. However, the letter made it clear that the attached Form RP50 was the formal notification in relation to the statutory redundancy. It had been made clear to the plaintiff at the meeting on 10th August, 2010 that, due to serious financial difficulties in the Examiner Group, the plaintiff could not be paid more than statutory redundancy.

2.8 The Form RP50 which was attached to the letter of 26th August, 2010 named Printers as the plaintiff's employer and set out the employer's PAYE number. It also set out the plaintiff's PPS number. It gave the date of notification of termination as 26th August, 2010 and gave the proposed date of termination as 22nd October, 2010. It identified the plaintiff's job title as "Group Training Manager" and gave the reason for redundancy as "reorganisation/ration", which I assume means rationalisation.

2.9 A meeting was arranged between the plaintiff and Mr. Colgan and it took place on 30th August, 2010. The plaintiff was accompanied by an official and two local shop stewards of the UNITE trade union. A note of the meeting put before the Court by the plaintiff has been accepted by Mr. Colgan as being accurate. The note discloses that the UNITE official, Brendan Byrne, told Mr. Colgan that information could be furnished to him in relation to the promise of the previous managing director (Mr. Dinan) that the plaintiff would be redeployed to Examiner if there was a situation of not enough work. At the end of the meeting Mr. Colgan suggested that he be given a copy of the "document/undertakings details re [the plaintiff's] future". Mr. Colgan's position is that that has not happened. He has also taken issue with the accuracy of assertions made by the plaintiff in a letter of 14th September, 2010 to him.

2.10 Under the heading "Agreement", the plaintiff, in the letter of 14th September, 2010, stated that he was moved to a new role "as Accounts Administrator/Payroll Administrator", in addition to dealing with health and safety issues for the Examiner Group, as a result of his meeting with Mr. Dinan in 2008 but "on the same terms and conditions (other than job specification)". He stated that the agreement was made with the proviso that if it did not work out, he would revert to a role within the Examiner Group on the same terms and conditions. Since 2008 he has had a significantly reduced role in respect of the management of training within the Examiner Group.

2.11 Aside from relying on a commitment by Mr. Dinan to redeploy him, the plaintiff has contended that his role has not been the role of Group Training Manager since 2008. However, Mr. Colgan in his second affidavit has exhibited e-mails from the plaintiff in April and July 2010 in which he has described himself as Group Training Manager of Holdings. The plaintiff's position is that the designation was entirely nominal, that in substance he has not occupied the position of Group Training Manager since 2008 and that the position of Group Training Manager was actually made redundant in 2008.

3. The basis of the plaintiff's claim and the defendants' response

3.1 This is not a case in which the defendant employer, whoever it is, contends that the plaintiff's contract of employment has been terminated on notice in accordance with its terms, which, presumably, explains why there is no evidence before the Court of those terms. Nor is it a case in which the defendant employer contends that there are grounds for dismissing the plaintiff for misconduct, unsatisfactory performance or lack of confidence in the plaintiff. The sole basis on which the defendant employer has sought to terminate the plaintiff's employment is by invoking the statutory entitlement to terminate on the basis of redundancy.

3.2 The plaintiff's primary answer is to rely on what transpired between him and Mr. Dinan in 2008. The plaintiff is not making the case that Mr. Dinan made some type of misrepresentation to him and, in my view, the authority relied on in the defendants' written submissions, *Colthurst v. La Touche Colthurst* (Unreported, High Court, 9th February, 2000) is of no relevance to the position adopted by the plaintiff.

3.3 As outlined by his counsel, the plaintiff's case, on the basis of what transpired between him and Mr. Dinan is not that he was promised a job for life, or anything beyond a commitment to redeploy him to Examiner, where he would have to take his chances of being made redundant in common with the other employees of Examiner. It was made clear that the plaintiff is not relying on a mere representation by Mr. Dinan. The nub of the plaintiff's case is that, in the context in which the plaintiff was being asked to agree to a substantial change in the terms of his employment, that is to say, assignment to inferior duties, he accepted that change on the basis that Mr. Dinan, on behalf of his employer, promised that, rather than being made redundant in the future, he would be redeployed to Examiner. Counsel for the plaintiff submitted that what was agreed between Mr. Dinan and the plaintiff has contractual effect, on the basis, as I understand it, that Mr. Dinan offered the varied terms to the plaintiff, and there was consideration in the sense that, if the plaintiff had been made redundant in 2008, that could have had advantages for the plaintiff and disadvantages for his employer. So, in essence, the plaintiff's case is that he agreed a new term with his employer in 2008, which has contractual effect, which was categorised as a special condition that he would not be made redundant from the duties to which he was being assigned, but that he would be redeployed to Examiner.

3.4 The position of the defendants is that there was no such new special condition entered into in 2008. Counsel for the defendants pointed to what he contended was the weakness of the evidence adduced by the plaintiff, the degree of inconsistency between his first affidavit, what transpired at the meeting on 30th August, 2010, his letter of 14th September, 2010 and the position he adopted in Court. In particular, counsel for the defendants pointed out that, insofar as the plaintiff was trying to set up a contractual term, there was no documentary evidence to support his contention, there was no correspondence dealing with the new term and he did not assert its existence until August 2010.

3.5 A secondary argument was advanced on behalf of the plaintiff, which targeted the defendants' case that the plaintiff's employer was exercising its statutory entitlement to make the plaintiff redundant. It was submitted on behalf of the plaintiff that the redundancy the subject of the letter of 26th August, 2010 and the Form RP50 is not a genuine redundancy, in that there has been no position of Group Training Manager in the Examiner Group since 2008 and that the plaintiff has not occupied that position since 2008. In relation to that argument, counsel for the defendants submitted, on the basis of a number of authorities, including the decision of this Court in *Nolan v. Emo Oil Services* [2009] 20 ELR 122, that it is not open to the plaintiff to pursue a remedy for those complaints in these proceedings and that they are matters to be considered by the Employment Appeals Tribunal rather than the courts.

4. Conclusion on the secondary argument
4.1 If the action of the defendant employer as reflected in the Form RP50 is not a genuine redundancy and is, in reality, a dismissal dressed up as a redundancy, then it is an unfair dismissal under the statutory code and the only remedy available to the plaintiff is to seek redress in the manner provided in the Unfair Dismissals Act 1977 (the Act of 1977), as amended. To get redress the plaintiff must avail of the statutory mechanisms which the Oireachtas has put in place. The High Court, as a Court of first instance, cannot give redress for unfair dismissal. An application for redress must be initiated before a Rights Commissioner or the Employment Appeals Tribunal.

4.2 It is true that in one of the authorities relied on by counsel for the plaintiff, *Phelan v. BIC (Ireland) Ltd.* [1997] ELR 28, one of the grounds which had been advanced by the plaintiff, on which Costello P. held that a serious issue had been raised entitling the plaintiff to an interlocutory injunction was that a serious issue had been raised as to the illegality of the decision to dismiss him on the basis that the absence of any formal redundancy notice or offer of a lump sum to the plaintiff violated the provisions of the Redundancy Payments Act 1967. Counsel for the plaintiff drew the Court's attention to the following passage from the judgment of Costello P. (at p. 211):

> "There is a general principle that the courts do not grant injunctions in cases of termination of contracts of employment on the principle in the old law reports and textbooks that a contract of employment is a contract of personal service. But there has been a strong body of judgments and authorities that this old rule should be subject to qualifications and in a number of cases the courts have granted interlocutory relief where it was in the interest of justice to do so."

Costello P. then referred to the series of cases starting with *Fennelly v. Assicurazioni Generali* [1985] 3 ILTR 73, including the decision of Keane J. in *Shortt v. Data Packaging* [1994] 5 ELR 25.

4.3 In this case, if the plaintiff does not succeed in his primary argument, and is constrained to fall back on the secondary argument, he will ultimately at the trial of the action be seeking redress for unfair dismissal. That is redress he must pursue in accordance with the provisions of the Act of 1977. For the reasons set out in *Nolan v. Emo Oil Services*, I consider that the Court should not grant interlocutory relief pending pursuit of redress which is statutorily exclusively required to be initiated in another forum, where entitlement to such redress is the only issue between the employee and the employer.

5. Conclusion on the primary argument
5.1 Counsel for the plaintiff implicitly acknowledged that the relief the plaintiff is seeking is mandatory in substance. He could have hardly have argued otherwise, given that the plaintiff is seeking to be continued in his employment and to be paid his salary and emoluments pending the trial of the action. Counsel for the plaintiff expressly acknowledged that the first test for the Court in addressing the primary argument is whether the plaintiff has shown "that he has a strong case that he is likely to succeed at the hearing of the action" (*per* Fennelly J. in *Maha Lingham v. Health Service Executive* [2006] 17 ELR 137) on that argument. However, he rhetorically raised a question as to what that means and how the test is complied with: does it mean that one has to show a high degree of probability of probable success?

5.2 The strong case test laid down in the *Maha Lingham* has been consistently followed in the High Court, as it must be, in employment injunction cases in which mandatory relief is sought. The rationale of its application is set out in the judgment of Clarke J. in *Bergin v. Galway Clinic Doughiska Ltd.* [2008] 2 I.R. 205, which was relied on by counsel for the defendants. However, because of the nature of an interlocutory application and, in particular that it is based on affidavit evidence and is adjudicated upon in circumstances in which neither party can procure the compulsion of testimony by subpoena, or access to or production of relevant documentation by the discovery process, it is inherently difficult for the party seeking mandatory relief, where there is a conflict of evidence or, as here, a challenge that the evidence led by the plaintiff to support the legal basis of his primary argument is inadequate, to make out a strong case. The reality of this case is that the parties have invited the Court to assess the affidavit evidence with a view to determining whether the evidence before the Court supports the legal basis of the plaintiff's primary argument. That exercise necessarily involved the Court forming a view as to how the conflict of evidence, which undoubtedly exists, should be resolved, which goes against a long line of authority.

5.3 The *fons et origo* of the current law on interlocutory injunctions is the decision of the Supreme Court in *Campus Oil v. Minister for Industry (No. 2)* [1983] I.R. 88. It is frequently overlooked that in that case the defendants, on a counter claim, were seeking what was in effect a mandatory injunction against the plaintiffs to compel them to purchase a specified proportion of their oil supply requirements from the State oil refinery at Whitegate, and interlocutory relief was sought pending a reference to the European Court of Justice from the plaintiffs' claim in the proceedings that the relevant secondary legislation contravened certain articles of the Treaty of Rome. It was submitted on behalf of the plaintiffs, in its response to the application for an interlocutory injunction, that the defendants had to establish a probability that their counter claim would succeed at the trial and that the plaintiffs' claim would be dismissed. That submission was dismissed both in the High Court and in the Supreme Court. In the Supreme Court O'Higgins C.J. stated (at p. 106):

> "… I would regard the application of the suggested test as contrary to principle. As I have already mentioned, interlocutory relief is intended to keep matters *in statu quo* until the trial, and to do no more. No rights are determined nor are issues decided ….
>
> The application of the plaintiffs' criterion on a motion for interlocutory relief would involve the Court in a determination of an issue which properly arises for determination at the trial of the action. In my view, the test to be applied is whether a fair *bona fide* question has been raised by the person seeking the relief. If such a question has been raised, it is not for the Court to determine that question on an interlocutory application: that remains to be decided at the trial. Once a fair question has been raised, in the manner in which I have indicated, then the Court should consider the matters which are appropriate to the exercise of its discretion to grant interlocutory relief."

O'Higgins J. expressly approved the approach adopted by the House of Lords in *American Cyanamid v. Ethicon Ltd*. [1975] AC 396 in the observations of Lord Diplock at p. 407.

5.4 A similar approach was adopted by the Supreme Court in *Westman Holdings Ltd. v. McCormack* [1992] 1 I.R. 151, albeit in the context of an application for a prohibitory interlocutory injunction, namely, an injunction to restrain picketing. Finlay C. J. stated (at p. 157):

> "Having regard to the decision of this Court in *Campus Oil* …, and in particular to the judgment of O'Higgins C.J. in that

> case, I am satisfied that once a conclusion is reached that the plaintiff seeking an interlocutory injunction has raised a fair question to be tried at the hearing of the action in which, if he succeeded, he would be entitled to a permanent injunction that the Court should not express any view on the strength of the contending submissions leading to the raising of such a fair and *bona fide* question, but should proceed to consider the other matters which then arise in regard to the granting of an interlocutory injunction."

5.5 In the *Maha Lingham* case, having set out that the "strong case" test is the appropriate test, where mandatory relief is sought, Fennelly J. went on to state:

> "So it is not sufficient for him to show a *prima facie* case, and in particular the courts have been slow to grant interlocutory injunctions to enforce contracts of employment. None of this is to deny that there had been developments in the law in recent years and it is necessary to refer very briefly to the nature of these developments. The first is that, in this jurisdiction the development can be traced to the judgment of Costello J. in a case of *Fennelly v. Assicurazioni Generali* [1985] 3 ILTR 73 in which an injunction was granted directing an employer to continue payment to the plaintiff, in that case pending the hearing of the action, and that type of jurisdiction was exercised in a number of subsequent cases. It is fair to say however, that there is a very strong trend in those cases to the effect that where a person has a clear right to either a particular period of notice or a reasonable notice or has a fixed period of employment, a summary dismissal or dismissal without notice or without adequate notice is a first step to establishing the ground for an injunction in those sort of cases …
>
> A second element in cases of that sort is that, where a dismissal is by reason of an allegation of misconduct by the employee, the courts have in a number of cases at any rate imported an obligation to comply with the rules of natural justice and give fair notice and a fair opportunity to reply …. So those aspects of the developing line of case which can be traced from *Fennelly* … and subsequent cases including *Shortt v. Data Packaging Ltd*. [1994] ELR 251 decided by Keane J., as he then was, do not appear to apply to the present case."

5.6 Before attempting to apply the "strong case" test to the facts of this case, I think it is pertinent to quote, as I frequently do, part of the passage from the speech of Lord Diplock in the *American Cyanamid* case which was quoted with approval in the Supreme Court in the *Campus Oil* case, in which Lord Diplock stated:

> "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

5.7 Turning to the circumstances of the plaintiff and whether he has shown a strong case that a special condition was imported into his employment contract as a result of what transpired between himself and Mr. Dinan in 2008 to the effect that he would be redeployed to Examiner, rather than his employment being terminated on the ground of redundancy in the duties to which he agreed to be assigned. On a theoretical basis, I am satisfied that the contractual right which the plaintiff seeks to protect by injunction is akin to the type of contractual right which Fennelly J. identified as underlying the decisions in the *Fennelly* case and the *Shortt* case. That leads to the question whether the factual basis on which the plaintiff seeks to support his contention that he has the benefit of a special contractual condition that entitles him to be redeployed to Examiner and that the status quo in relation to his employment within the Examiner Group, whoever his employer is, should be maintained pending the trial of the action has been made out as a strong case. I have come to the conclusion that I must answer that question on the basis of the plaintiff's own evidence. I do not think it appropriate to attempt to divine from the evidence as to Mr. Dinan's position which is before the Court (Ms. Kenny's affidavit and Mr. Colgan's second affidavit) whether, if he was giving oral evidence and was subject to cross-examination, his evidence would establish a strong case as to the introduction of a special contractual provision of the type which the plaintiff asserts was agreed into his contract of employment in 2008. Mr. Colgan, of course, was not at the meeting in 2008 and what he has to say about the outcome of that meeting is to a large extent advocacy. I have come to the conclusion on the basis of the plaintiff's evidence, which I have outlined extensively earlier, that he has not established a strong evidential basis for the primary argument. He has made assertions as to his understanding and belief in relation to the existence of an agreement with Mr. Dinan, but no more.

5.8 Albeit with an awareness of the less than satisfactory nature of the process, I have come to the conclusion that the plaintiff has not met the "strong case" test on the primary argument. Accordingly, his application for an interlocutory injunction based on the primary argument must be refused.

6. Orders

6.1 There will be an order refusing the plaintiff's application for interlocutory injunction. However, the Court will facilitate the plaintiff to bring the substantive action, which seems to involve a fairly narrow issue, to hearing as soon as possible.

6.2 While the attitude of the defendants to the amendment of the endorsement on the plenary summons was understandable in the context of the pending application for interlocutory injunction, as a matter of common sense, I think the defendants should consent to the amendments, if the plaintiff is proceeding with the substantive action. In reality, adopting that approach would obviate the necessity for a motion or the plaintiff issuing a fresh summons and would save costs and stamp duty.