THE HIGH COURT

[2005 No. 809 P]

BETWEEN

ANN CONDON

PLAINTIFF

AND

ALLIED IRISH BANK PLC, KIERAN ASHCROFT, THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND, AND MICHAEL CARROLL

DEFENDANTS

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 2nd day of February, 2018

Nature of the Case

1. This is a case in which the plaintiff alleges that the second defendant, Mr. Ashcroft, defrauded her in the context of their joint purchase and running of a pub in Cork, known as the Anchor Bar, and that the first, third and fourth defendants are liable to her in respect of her loss as a result of his fraud, either or both on the ground(s) of vicarious liability or direct liability for fraud, negligence and/or negligent misstatement. Mr. Ashcroft was an employee of AIB, the first defendant, and he opened bank accounts at AIB in the plaintiff's name through which various monies related to the purchase and running of the business were processed. The fourth defendant, Mr. Carroll was an employee of Bank of Ireland, the third defendant, and the plaintiff claims that he engaged in a negligent misstatement by introducing her to the second defendant as a reliable person with whom to go into business, that he was involved in the purchase of the Anchor Bar, and that he continued to have an involvement with regard to the Anchor Bar, including with regard to the giving of a loan for renovations approximately 17 months after its opening.

2. It was decided by the Court in the course of the hearing that issues relating to liability should be dealt with in the first instance, and that the Court should only proceed to hear evidence as to the quantification of the various losses if and when was established by the plaintiff that there was liability on the part of any or all of the first, third and fourth defendants. This judgment accordingly deals with liability only.

3. The Court was made aware that the second defendant, Mr. Ashcroft, had fled the country after he had been arrested and interviewed in the course of a Garda investigation into his alleged fraudulent dealings with monies entrusted to him by a number of customers of the AIB. The Court heard evidence that the DPP had directed that certain criminal charges be brought against Mr. Ashcroft, following the submission to that office of the Garda investigation file, but that no trial ever took place because he could not be located. It does not appear that Mr. Ashcroft was ever served with these proceedings. It was a frequently repeated theme in the plaintiff's case that Mr. Ashcroft was guilty of fraud on various customers at AIB. Indeed, this went so far as the making of an assertion, in written submissions, that he had perpetrated a fraud on the scale of €1.25 million over 60 customers over about 3 years. However, the evidence of Detective Sergeant Fogarty (called on behalf of the plaintiff) before me was that there were 15 complainants in addition to the plaintiff, including AIB itself. He did not put any figure of the estimated amount of fraud. He said that Mr. Ashcroft had been arrested and questioned on the 2nd February 2004, and a file subsequent submitted to the DPP. The DPP directed that charges be preferred under theft and fraud legislation, although he could not recall if any of the directed charges related to Ms. Condon, and he recalled that "one of the difficulties was that it [her case] was lacking proof". He said that Mr. Ashcroft was never charged because he disappeared and could not be found, despite Interpol and Europol having been circulated.

4. It may well be that these events provide a context as to why the plaintiff has concluded so firmly that Mr. Ashcroft defrauded her in the various ways put forward in the course of this case. However, this court has no evidence of fraud by Mr. Ashcroft other than the evidence put forward by the plaintiff herself, and is not entitled to start from a position of any presumption of wrongdoing or fraud on the part of Mr. Ashcroft, or of loss on the part of the plaintiff. All of the ingredients of the plaintiff's case must be established on the balance of probabilities in the ordinary way, on the basis of the evidence adduced before the court in these proceedings. The court is not entitled to reach conclusions or draw inferences from the evidence that it would not otherwise draw, simply because there is a history of allegations having been made, a criminal investigation carried out, and charges directed, which would have led to the preferment of charges against Mr. Ashcroft if he had been located.

Lapse of time since the events complained of

5. It is a striking feature of this case that although the trial was conducted in 2017, the proceedings were initiated in 2005, and related to events which had taken place between 1999 and 2002. Thus, there was a gap of some 15-18 years between the events in question and the giving of evidence about those events. This is, needless to say, a situation which is very far from ideal, given the effect of time upon memories. The proceedings were initiated by plenary summons issued on the 3rd March, 2005. Appearances were entered on behalf of the first, third and fourth defendants between March and October, 2005. A detailed statement of claim was delivered on the 22nd November, 2006. Defences were delivered in 2007 and 2008. Notice for particulars were served and replies furnished in due course, and a discovery order in respect of AIB was made on consent on the 5th November, 2010. Notice of trial was served on the 23rd January, 2012. By order dated 21st May, 2015, discovery was ordered in respect of the plaintiff. Further particulars of loss were served on behalf of the plaintiff on the 14th October, 2015. In March 2017, there was a 12-day hearing before me, and the plaintiff herself gave evidence for the best part of 5 days of that hearing.

6. It emerged towards the end of the plaintiff's cross-examination that the plaintiff had previously instituted proceedings against Mr. Ashcroft, the second defendant, by plenary summons dated the 14th November 2002. In her evidence, she indicated that this was in respect of the same complaints the subject-matter of the present case. The solicitor acting for her at that time was a different solicitor, Mr. Martin Harvey. It is unclear to what extent she told her current solicitor about that case, as the latter did not seek out Mr. Harvey's file prior to the present hearing. It is clear that the plaintiff had numerous engagements with Mr. Harvey, as the court has seen a detailed bill of costs showing that various steps were taken on her behalf during the period between October 2002 and April 2005 by Mr. Harvey as well as junior counsel and senior counsel. This resulted in a total bill of IR£59,000 which was ultimately not paid by her and resulted in an order *of fieri facias* being made against her. She gave evidence to the Court that she did not know what had happened to the case against Mr. Ashcroft which had been commenced in November 2002. The records of the Central Office indicate that those proceedings concerned dissolution of the partnership and the taking of accounts; and that she obtained judgment in default against Mr. Ashcroft.

7. The plaintiff also gave evidence that settlement discussions of some kind took place on the steps of a courthouse in Cork in the context of the Anchor bar's landlords having issued forfeiture proceedings. Again, she said that she did not know what the outcome was, but said the lease was forfeited and that she did not in any way benefit financially as a result of these settlement talks.

8. It is, to put it mildly, most unsatisfactory that these proceedings, heard in 2017, took place against a backdrop of such uncertainty as to what legal proceedings, financial settlements or other outcomes might have occurred back in the 2002-2005 period.

Outline of events between 1999-2002

9. In my examination of this case, it has seemed to me that the case turns primarily on the view the Court takes of the facts. I propose in the first instance to set out a short outline of the chronology of events between 1999 and 2002, in order to provide a framework for the discussion of the claims and evidence which then follows the short chronology.

1996: The plaintiff purchases the pub "Isaac Bells"

10. In 1996, the plaintiff, then a woman in her 40s, with a few years of experience working in a public house, purchased a public house in Cork, called Isaac Bells, with the assistance of a loan from Bank of Ireland. At that stage, she was a customer of Bank of Ireland, and was receiving advice from a Mr. Dermot Kelly in that bank (Patrick's Bridge branch). She ran this business for some time, but encountered financial difficulties and was unable to obtain further financing from Bank of Ireland through Mr. Kelly. At this stage, it was suggested to her by a friend of her partner that she might talk to Mr. Carroll, the fourth defendant, who also worked in Bank of Ireland but in a different branch to Mr. Kelly. She did not know Michael Carroll or have any dealings with him prior to this.

11. Mr. Carroll's position in the bank at that time with Bank of Ireland was that of relationship and development manager in Wilton Business Centre, based in the suburbs of Cork City. He agreed to meet the plaintiff. The details of their interactions are subjected to closer scrutiny later in this judgment. There is no dispute on the evidence, however, that Mr. Carroll introduced the plaintiff and Mr. Ashcroft to each other.

Events in 1999, including the sale of Isaac Bells and the purchase of the Anchor Bar

12. In 1999, the plaintiff sold the Isaac Bells pub. She and Mr. Ashcroft then purchased a different pub, the Anchor Bar, also in Cork. The purchase price of the Anchor bar was a matter of some debate at the hearing. Various figures ranging from £140,000 to £210,000 were mentioned. This will be discussed further below.

13. After the plaintiff sold Isaac Bell, the proceeds were used to pay off her mortgage with Bank of Ireland. As will be seen, one of the plaintiff's claims in the present proceedings is based upon an alleged misappropriation by Mr. Ashcroft of some of the remaining monies that the plaintiff realized through the sale of Isaac Bells. It is alleged that he did this via his dealings with two cheques, one in the amount of IR£87,000 and one in the amount of IR£14,147.97. This will be discussed further below.

14. On the 26th March, 1999, a company by the name of Dublin Rovers was incorporated. This was apparently intended to be the corporate owner of the business of the Anchor Bar. No accounts were ever filed except for abridged accounts for the period before any trading was done. The plaintiff and Mr. Ashcroft were directors and equal shareholders in Dublin Rovers Limited. The company was ultimately dissolved on the 19th December, 2003.

15. Between June and August 1999, two accounts in the name of the plaintiff were set up in AIB Mallow, where Mr. Ashcroft worked. These accounts ended in the digits 092 and 258 respectively, and I will have occasion to refer the account ending 258 again, which I will call "the 258 account". It was intended that monies from the business of the Anchor Bar would be paid into a Dublin Rovers account in Ulster Bank, but this account was not in fact opened until the 3rd December 1999. In the meantime, takings from the business of the Anchor Bar were lodged into the AIB Mallow 258 account. As will be seen, another part of the plaintiff's case is based upon alleged misappropriation by Mr. Ashcroft of takings from the Anchor Bar that, on the plaintiff's case, should have been lodged to the 258 account and, later, the Dublin Rovers account, but were not.

16. On the 3rd August, 1999, the assignment of the lease in respect of the Anchor Bar took place. Sometime around that time, perhaps the Bank Holiday weekend in August, the plaintiff started trading at the Anchor Bar. She gave evidence that the agreement between her and Mr. Ashcroft was that she would engage in the day-to-day running of the business, as this was her strong point, while Mr. Ashcroft would deal with the financial side of things, as she was very weak in this area. The plaintiff gave evidence that she worked extremely long hours at the Anchor Bar from the time it opened until she left in approximately summer of 2001, and that she managed to substantially increase the weekly turnover from what it had been under the previous owners of the bar. The plaintiff kept the till rolls from the Anchor Bar in her possession, and also certain diaries recording the takings.

The year 2000, including the loan for renovations to the Anchor bar

17. In February 2000 Mr. Ashcroft moved from the Mallow branch of AIB to the Middleton branch of AIB. In April 2000, the plaintiff experienced chest pains which resulted in a hospital referral for investigation of a possible cardiac problem. It transpired that she did not have any cardiac problems but may be suffering from stress. On the 29th June, 2000, an application was made jointly by the plaintiff and Mr. Ashcroft to Bank of Ireland for a loan for IR£150,000.00 in order to fund building improvements to the Anchor Bar. These renovations included two apartments in the upper part of the bar premises, with a view to their being rented out. This loan was dealt with by Mr. Carroll, the fourth defendant, in Bank of Ireland. The renovations in question were in fact carried out and at least one of the apartments was then occupied by a tenant.

The year 2001: including the purchase of Sunview Terrace with the assistance of a mortgage from ACC bank

18. Sometime in 2001, probably in early summer, the plaintiff left her position in the Anchor Bar and ceased her involvement in the running of it. An acquaintance of Mr. Ashcroft, a Mr. Ger Keegan, took over the day-to-day running of the bar. The plaintiff gave evidence that she went to live in Cobh, in an apartment owned by Mr. Ashcroft (rent-free), and that she received certain monies (both by way of wages and by way of lump sums) from Mr. Ashcroft at various times, which will be described further below.

19. At a certain point, it was decided that plaintiff would purchase a house which I will refer to as "the Sunview Terrace house". The booking deposit was paid in May 2001, and the money for the booking deposit was apparently provided by Mr. Ashcroft. A loan was obtained from ACC bank. This loan was not sanctioned until December 2001. The delay was caused by ACC bank wishing the plaintiff to demonstrate that she had £30,000 in her account. Mr. Ashcroft assisted the plaintiff in obtaining this loan, in particular, by transferring £30,000 not belonging to her into one of her accounts in order to satisfy ACC's requirement in this regard. The money was transferred into her account and left it again within 24 hours, on the 28th November 2001, and was clearly designed to mislead ACC

bank as to the plaintiff's financial situation. The plaintiff gave evidence that it was her intention to "do up" the house and sell it again for profit, but that she was unable to "do it up" because she lacked the necessary funds. She gave evidence that she sold the house, and documentation from this period indicates that she made a profit of €22,747.76 on this sale in June 2003. Another of her complaints in these proceedings relates to an alleged loss of "anticipated profit".

The year 2002, including the commencement of the garda investigation

20. While it was quite challenging to piece together the chronology being put forward by the plaintiff, it was particularly difficult regarding the year 2002. Of assistance in this regard were a number of other sources, including the evidence of a (retired) Detective Garda who had been part of an investigation into Mr. Ashcroft; the evidence of Mr. Peter Russell, an accountant employed by the plaintiff in the summer of 2002; the evidence of Mr. Tom Connolly, employed at AIB; and some contemporaneous documentation.

21. It is clear from the evidence of Tom Connolly, a former regional director in AIB (now retired) that an AIB internal investigation started up during the year 2002 with regard to Mr. Ashcroft. Mr. Connolly gave evidence that this commenced when, in March of 2002, a customer living in England made a complaint to AIB that Mr. Ashcroft had misappropriated a sum of €500. Initial inquiries were made, and Mr. Ashcroft sought to hand in his resignation within days of the complaint. There is some lack of clarity as to his precise status between March and September/December 2002, but he was formally dismissed on the 17th December, 2002. In the interim, AIB received a number of complaints from various customers about Mr. Ashcroft. The bank apparently sought a Mareva Injunction in respect of Mr. Ashcroft, but not until October 2003.

22. Meanwhile, the timeline as it applies to the plaintiff appears to be as follows. The documentation shows that her AIB accounts were closed at Mallow and Middleton in April/May 2002. The plaintiff gave evidence that she paid off the outstanding balances with sums provided to her by Mr. Ashcroft. Ms. Condon went to an accountant, Mr. Peter Russell, in or about June 2002, to discuss her suspicions relating to Mr. Ashcroft. Based upon what she told Mr. Russell, he started to investigate various cheques and other documents and communicated with AIB on her behalf, including by way of correspondence in which he made certain allegations of forgery. Mr. Russell also advised her to go to An Garda Siochána. The evidence from the (retired) Detective Sergeant who gave evidence in the case was that the plaintiff was in fact the first person to complain to the gardaí about Mr. Ashcroft. He could not say on what date she came to him, but he was in a position to say that her first statement was dated the 4th October, 2002, and that a further statement was dated the 27th October 2002. In November 2002, the plaintiff had a meeting in a hotel or restaurant with Mr. Carroll, the fourth defendant, which she recorded on a phone or some such device. This came to light during the plaintiff's evidence. She was asked to retrieve the recording and did so. Ms. Gwen Malone created a transcript of it, as did the plaintiff's solicitor and there are some differences between the two transcripts, of which the Court has taken note. More will be said about this conversation below.

23. Meanwhile, discussions took place between the plaintiff, Mr. Russell and AIB. A meeting took place in which an explanation was given by AIB as to the processing details of the two cheques, for IR£87,000 and IR£14,147.97, respectively. An offer was made by AIB to refund Ms. Condon with IR£65,000. This offer was repeated subsequently by letter dated the 12th January, 2004, but was declined by the plaintiff on the basis that she was entitled to much more as a result of Mr. Ashcroft's behaviour.

2002-2005

24. As noted at the outset of this judgment, it appears that Ms. Condon instructed a solicitor, Mr. Martin Harvey, who engaged counsel and undertook substantial work on her behalf up to the year 2005, including the issuing of proceedings against Mr. Ashcroft for dissolution of partnership. The present proceedings were commenced in 2005.

25. There are two areas in respect of which I consider it important to examine the evidence in further detail. The first concerns the evidence as to the extent of Mr. Carroll's interactions with the plaintiff, which is important from the point of view of her claim that he engaged in negligent misrepresentation to her as to the reliability and untrustworthiness of Mr. Ashcroft. The second area concerns the state of knowledge, if any, of AIB with regard to Mr. Ashcroft's untrustworthiness, having regard to the evidence concerning two events within AIB, which I shall refer to as "the R affair" and "the C affair".

The interactions between Mr. Carroll and the plaintiff

26. The plaintiff's evidence was as follows. She said that her partner, on a friend's recommendation, suggested she make contact with Mr. Carroll for advice. She says she went to meet him where he worked and that a meeting took place after office hours. She says that subsequently they went over to a coffee shop a couple of times and had further discussions. She said that Mr. Carroll suggested to her that, in light of her financial difficulties, perhaps she should consider bringing an investor on board. He said he might have two persons who would be interested, one of whom was Mr. Ashcroft, the second defendant, and that she agreed that he should approach Mr. Ashcroft on her behalf. As regards that what Mr. Carroll told her about Mr. Ashcroft she said as follows:-

> "…he knew him personally, that he dealt with him, that he was a sound guy, he was fierce nice, he had a big job with AIB, he was a manager with AIB, he was financial adviser and I couldn't be in better hands if he agreed, if Kieran Ashcroft agreed to go with me I couldn't be in better hands."

27. She said she thought she would be lucky to get a bank manager who was a financial adviser as well and so she was delighted with the suggestion. She says that she had one bank manager recommending another bank manager and she accepted his word. She says that Mr. Carroll organised for her to meet Mr. Ashcroft. There was confusion in her evidence as to whether she first met Mr. Ashcroft when he came to see the Isaacs Bells or when he came to see the Anchor Bar. She initially said the former, then said the latter.

28. She said that Mr. Carroll also told her that clients of his, the O'Leary brothers, had a pub for sale called the Anchor Bar and that he arranged for her and Mr. Ashcroft to see it. She said that she had subsequently discussions with Mr. Ashcroft and this involved her going to his place of business, which at the time was AIB, Mallow. She said that she and Mr. Ashcroft came to an arrangement that they would set up a 50/50 partnership, and that her role would be to run the bar side of things, which was her strength, and that he would do everything connected with the finances. The plaintiff was anxious, throughout the proceedings, to emphasise that she had no talent for finance, figures or paperwork. Ms. Condon said that she knew that Mr. Ashcroft had another bar in Mallow as well, so that, as far as she was concerned, he was not only a financial adviser but also a publican.

29. As regards the purchase price agreed for the Anchor Bar, she said that she herself carried out the negotiation with the O'Leary Brothers, the vendors, which resulted in a purchase price being agreed at £210,000. She gave a vivid description of a meeting between herself, Michael Carroll and Barry Lynch, an accountant, in Barry Lynch's office, which was on the very top floor of the Mall, facing the Imperial Hotel. She said they told her that the O'Leary brothers were across the road in the Imperial Hotel and that they

were "after agreeing now to £230,000", and she was told to go across on her own and do the sale for that amount. She says she went over to the hotel and she started to bargain with the O'Leary Brothers, and haggled with them, and bluffed them that she was ready to walk out, and got the price down to £210,000. She said that she was absolutely thrilled with herself and went back and told the others that she had got the price to this level. She said she was very surprised at the reaction she got because nobody was pleased, although she had done such a great thing; in fact, they seemed quite miffed with her. At this stage of her evidence, she was saying that the O'Leary Brothers had agreed a purchase price of IR£210,000 at that meeting with her in the Imperial Hotel. In cross-examination, she accepted that the purchase price of IR£210,000 was not accepted until several days later. She continued to insist that Mr. Carroll was present at a meeting in Mr. Lynch's office before she went over to haggle with the vendors of the Anchor Bar.

30. Having sold the Isaac Bells, the plaintiff was in a position to provide monies towards the purchase price of the Anchor Bar. She gave evidence that the intention was that she and Mr. Ashcroft would go 50/50 on the purchase price. She said that she wrote a cheque for a booking deposit of £3,000.00, that she provided a cheque in the amount of £87,000, and a cheque in the amount of £14, 148.97. In relation to the cheque for IR£87,000, the plaintiff again gave a vivid account of event. These were in the following terms. She said that Mr. Carroll had moved offices and was in a big house belonging to the bank in Douglas with a "big winding staircase up". His office was at the top. She said that when she was called to his office, Mr. Ashcroft was already there. She had the cheque already made out except that she asked whether it should be made out to the auctioneers or the O'Leary brothers, and they said "just make it out to yourself". Mr. Carroll produced a big bundle of papers and asked her to sign them and she signed everything. She put the cheque on the table and left it with them. She said "I kind of had to slide it kind of into the table". Thus, she included Mr. Carroll at a second meeting concerning the purchase of the Anchor Bar. However, later in her evidence, she became very confused as to whether this meeting at the top of the "windy stair" was in connection with the purchase of the Anchor bar or the granting of the Bank of Ireland loan for £150,000 in respect of renovations in the following year, with which Mr. Carroll was indisputably connected.

31. Mr. Carroll's evidence was as follows. He said that a colleague of his asked him, on behalf of Mr. Condon's partner, if he would meet the plaintiff. He was told that she seemed to be "in a bit of difficulty" and he arranged to meet her in the autumn of 1998. He says that she came to his office in the Wilton branch, but that no real discussion took place that day and he asked her to get some financial information together. He said that he subsequently dropped in to her and had a conversation with her in a living area upstairs in the Isaac Bells pub, but that it was not very helpful because she had no bank statements, accounts or other documentation to show him. There was discussion about the viability of the Isaac Bells pub and a discussion about the possibility of extending the premises, as the premises next door were on the market. He said that about a month later he introduced Mr. Ashcroft, the second defendant, to the plaintiff. He said that this was in the context of the premises adjoining the Anchor Bar, but that it transpired very quickly that Mr. Ashcroft had no interest in the adjoining premises. Mr. Ashcroft was a customer of Bank of Ireland, one of approximately 2,000 clients that Mr. Carroll had and was a "reasonable sized client". He said he had known him as a customer for approximately four years and Mr. Ashcroft had conducted his accounts and his business at the bank in a proper manner. His account was trouble-free and he, Mr. Carroll, had no reason to be uneasy in relation to him.

32. He said that was further telephone contact between himself and the plaintiff, and that in one of those conversations he told her that the Anchor was coming up for sale and that she could contact one of the owners if she wanted to have a look at it. He knew this because the O'Leary brothers, also clients of his, had asked him to let people know that it was coming up for sale and to mention it to anybody he thought might be interested. He said that he mentioned the Anchor Bar to the plaintiff and to Mr. Ashcroft completely separately. He was not aware that a business relationship was developing between them and he was "more than surprised" when he was informed they had come together to buy the Anchor.

33. As regards the plaintiff's evidence regarding a meeting at the office of Barry Lynch prior to negotiations by her at the Imperial Hotel, he denied that he was present at any such meeting. He said that the plaintiff had asked him to recommend an accountant and he recommended Barry Lynch, who was also one of his customers. Mr. Carroll said that he arranged a meeting with Mr. Lynch and the plaintiff, but that his role at that meeting was very limited. He said he was never present at any meeting in Mr. Lynch's office regarding the negotiation of the purchase price of the Anchor Bar or indeed any meeting at which were present Mr. Ashcroft, Mr. Lynch, the plaintiff and himself. He said that the only part he played in relation to the purchase of the Anchor Bar was to advise that the property was for sale, and that beyond that he had no involvement. He denied that he took a phone call from O'Leary brothers, during which they accepted the figure that the plaintiff had bid.

34. Mr. Carroll said that he occasionally went into the Anchor Bar socially because his girlfriend was living near there. He said that he did not recall being present for the launch of the Anchor Bar in 1999, but he did remember being at the re-launch after refurbishment on foot of the Bank of Ireland loan which he arranged in 2000. As regards the granting of the loan for renovations to the Anchor Bar, he said that in his view, the plaintiff was peripheral to the credit application because his client and his mark was Mr. Ashcroft.

35. In cross-examination, Mr. Carroll said that he had only reluctantly agreed to meet the plaintiff after he had been asked at least four times. He met her as a favour to a colleague and he was not "taking her on". He had told her that he had no influence and had nothing to do with her account in Patrick's Bridge and that she would have to deal with her manager there, Mr. Dermot Kelly, if she wanted to apply for money. He said that he did not know anything about her financial affairs and completely failed to extract any information from her in written form during that period. As a banker, he only worked with paper, accounts and bank statements. He absolutely disputed that there were several more meetings than what he had described and that at one point he said to her "I have an investor for you". He said that in his 31 years in banking he had never suggested to any customer the concept of even getting a partner, never mind recommending somebody for that purpose. He said that he had simply introduced her to Mr. Ashcroft in connection with the purchase of the premises next door to the Isaac Bells. Furthermore, had not vouched for his character in any way. He firmly disputed that he would ever have told the plaintiff that Mr. Ashcroft was a "bank manager", because he, as a bank employee himself, was clear in his mind that Mr. Aschroft had never attained anything like the rank of manager in AIB.

36. Mr. Carroll denied taking an active role in the first meeting at which she met Mr. Barry Lynch. He insisted that there was no meeting on the top floor of Mr. Lynch's office with Mr. Lynch and Mr. Ashcroft, from which they sent her across the road to meet the O'Leary's in the Imperial Hotel.

37. Mr. Carroll emphatically denied receiving any cheque for the purchase of the Anchor Bar. He was never at any meeting where a cheque for IR£87,000 was handed across, or mentioned, or slid across a table. He said that he did not hear from anyone that the Anchor Bar had been purchased by Mr. Ashcroft and the plaintiff until he was told by them sometime in May or June of 1999.

38. Mr. Carroll was questioned as to why it appeared that the money on the renovations appeared to have been spent before the loan was drawn down. His answer was that Mr. Ashcroft had provided it from his current account and that it was putting pressure under his account as a result. He said he accepted matters on the basis of the certification by an engineer/architect received, which was the normal procedure employed by the bank. He was questioned about why the money went into Mr. Ashcroft's account. He said

that he explained what was going on to Ms. Condon. He said his duty was to ensure that the money was drawn down and that it went for the purpose for which it was granted and as far as he was concerned, this was the case.

39. Mr. Barry Lynch also gave evidence in the case, as follows. He said that he met the plaintiff twice in total and that this was during the year 1999. He said that his first meeting with her was in the Imperial Hotel. Mr. Carroll was present for this meeting. This was for the purpose of what he described as a "kind of informal chat about Anne Condon's intention to acquire a pub". He said his understanding from the meeting was that he was being asked to prepare financial projections. He said that he would have made clear, as was the normal procedure, that he would need the historical turnover figures. He received a letter from Barrett and Associates, chartered accountants, dated 8th April, 1999. The court has seen this document and it indicates the turnover inclusive of VAT for the period of the 1st September, 1997 to 31st December, 1998 (prior to the purchase by the plaintiff and Mr. Ashcroft). He then prepared certain projections. He says he was not told at this first meeting that she was intending to purchase the Anchor Bar with anyone else.

40. He said there was s second meeting, purely between the plaintiff and himself, after he had prepared these figures. This meeting took place in his office at 11 South Mall. His office was in a building directly across from the Imperial Hotel, but his office was on the third floor, not the top floor, of a four-floor building. He said that the meeting as described by her with Mr. Ashcroft and Mr. Carroll and himself, in which there were discussions about the O'Leary brothers and negotiations in relation to purchase prices, simply did not happen. He said he had never met Mr. Ashcroft, even to this day. He also said that he had never heard of the O'Learys until this week, when he was listening to the evidence in the proceedings.

41. In cross-examination, it was elicited that, in addition to being a customer of Mr. Carroll in the bank, he had also purchased a holiday home with him in County Kerry around that time. He said that he had no diaries or timesheets in relation to the year in question, or any other note in relation to the plaintiff. At the time he met her in the Imperial Hotel she was purely a prospective client. As matters transpired he never saw her again after those two meetings. He said the initial meeting was relatively cursory and it would be purely just to get "a kind of a feel" for what she wanted. He thought the meeting lasted from 20 to 30 minutes. He said he never heard of Mr. Ashcroft until his name became notorious in later years because of the Garda investigation. He thought it was "bizarre" that Ms. Condon had given evidence about a meeting in his office in the manner described above.

42. Mr. Peter Owens also gave evidence in the case. He was working as a lending manager in the late 1990's in the Patrick's Bridge branch of Bank of Ireland in Cork. The manager at the time was Dermot Kelly. He gave evidence that the plaintiff had a loan with Bank of Ireland, which was advanced in or about 1996, in respect of which he had an involvement. This was a loan for IR£120,000 which had assisted her in the purchase of the Isaac Bell pub. He became her relationship manager in around May 1997. In August 1998, the bank called in the loan and her overdrawn current account also. He said there were ongoing meetings and negotiations in the meantime. The bank was of the opinion that the credit was going into a risk category and they were proactive in terms of meeting with her to try and get a resolution. The underlying problem was that she had cleared the pub out of a certain type of customer when she took it over and had been hoping to build it back up, but that this did not really materialise. She had submitted various applications to restructure her borrowings and to take over other liabilities that had built up. When the accounts did come in for September 1997, the fears they had were confirmed insofar as the turnover had significantly dropped. He said that at that time they started looking at the possibility of looking for someone who might come in with some capital, some partner of some type who might get her "over the hump" until trade would increase. He said it came up in the course of conversations a number of times, and that Dermot Kelly had discussions in respect of this also. He thought that the plaintiff had been introduced to Dermot Kelly by other publicans by the name of the O'Connor brothers. She had previously worked for them in another pub where she had worked herself. Dermot Kelly was considered to be "the expert" in respect of pubs within Cork city and all referrals of any inner city pubs were made to him because of his expertise and his knowledge. He said that nothing had come of the suggestion of an investor.

Findings of Fact with regard to the extent of the interactions between the plaintiff and Mr. Carroll, the third defendant

43. I have carefully considered the evidence of the plaintiff, Ms. Condon, both as regards this issue and other issues in the case, together with the evidence of the other witnesses mentioned above. I am satisfied on the balance of probabilities that Mr. Carroll had a more limited involvement with the plaintiff than that which she described in evidence to the Court, and that it was more along the lines described by Mr. Carroll, namely that he provided an introduction to Mr. Ashcroft but had no particular involvement in the purchase of the Anchor Bar, still less any involvement in the ongoing running of the Anchor Bar. It may be that, because of the passage of time, she has conflated the involvement of different people; for example, it may be that the person who suggested she might obtain an investor was Mr. Dermot Kelly (since deceased). Further, I am not satisfied that any meeting took place in Mr. Lynch's office, at which Mr. Carroll was present, at which the purchase price was discussed. Nor am I satisfied that Mr. Carroll was present at any meeting at which the cheque for £87,000 was passed over by the plaintiff in respect of the purchase of the Anchor Bar. I am satisfied that Mr. Carroll did not refer to Mr. Ashcroft as a "bank manager", as he would be unlikely to make this mistake or have any reason at that time to mislead her about Mr. Ashcroft's position in the bank.

44. It is not clear whether any explicit representation by way of a positive reference was made by Mr. Carroll in respect of Mr. Ashcroft, but even if it was, at the time Mr. Carroll introduced Mr. Ashcroft to the plaintiff, he would have had no particular reason to doubt Mr. Ashcroft's honesty. Further, having considered the credit committee documents and the information contained therein at the time of the Bank of Ireland loan for the renovation of the Anchor Bar, I see nothing in there from which the inference could be drawn that Mr. Carroll knew or ought to have known that Mr. Ashcroft was dishonest or untrustworthy.

45. For completeness, I should say that I considered the contents of a document upon which reliance was placed on behalf of the plaintiff throughout the trial. This was a document entitled "Proposed partnership agreement Anne Condon and Kieran Aschroft". It was undated and unsigned. The document came from the discovery made by Bank of Ireland. Mr. Carroll gave evidence that he had never seen this document. It contained details in relation to the proposed partnership, some of which came to pass, such as the division of labour as between the plaintiff and Mr. Ashcroft, the employment of Helen Burke, solicitor, and other matters. One item on the document says "Myself to arrange to have all records and cash books updated on a daily basis and all paperwork to be organised in respect of VAT and PAYE". This is in addition to an item which says "Kieran Ashcroft will arrange to have lodgements collected on a daily basis and same to be balanced against till rolls. These will then be lodged and same are to be verified on a weekly basis by both Kieran and Anne". Thus, it seems clear that the "myself" referred to earlier is not Kieran Ashcroft. As I understand it, the plaintiff sought to suggest that this document was authored by Mr. Carroll and supported the plaintiff's evidence that he was much more involved than he was prepared to admit. I am not persuaded of this and I accept Mr. Carroll's evidence that he was not the author of the document. It will remain a mystery, but it is possible that it was created by Mr. Dermot Kelly (now deceased), the plaintiff's former bank manager at the Patrick's Bridge branch of Bank of Ireland, at a time when the purchase of the pub was in contemplation. Given the lack of certainty regarding the date and authorship of the document, I am not prepared to base factual conclusion in the case upon it.

46. The legal consequence of these findings of fact is that I cannot see any basis for attributing liability to Mr. Carroll for negligent misstatement. In particular, I do not think the facts are in any way comparable to those in *Forshall v. Walsh and Bank of Ireland* [1997] IEHC 100, where an exceptional relationship was found between Michael McSweeney and the plaintiff and which led to liability for negligent misstatement. This arose in circumstances where Michael McSweeney, the brother of one of the directors of a company which had defrauded the plaintiff had made repeated and unsolicited calls to her, that he had been present during detailed discussions of the enterprise and was involved in handing over cheques, where he had made inaccurate statements of fact (that the company was an agent of Lamborghini), where he failed to inform her of the fact of an appointment of a receiver to the company, and where there was an ongoing vouching for the reliability of the company. In those particular circumstances, it was held that the relationship was of a sufficiently proximate nature to impose a duty of care on Mr. McSweeney and through him, his employer the bank. In the present case, as I have found, Mr. Carroll, who was sought out by the plaintiff herself on foot of a recommendation by a friend of her partner, introduced the plaintiff to another client as someone who might be interested in a plan she then had with regard to the Isaac Bells and the pub next door; he also told her the Anchor Bar was for sale. He subsequently provided a loan to her and Mr. Ashcroft for refurbishments to the Anchor Bar in the course of his business as official in Bank of Ireland. He did not know of any reason, throughout this period, for distrusting or doubting the integrity of Mr. Ashcroft. There was no misstatement of fact either. The case is therefore, in my view, strongly distinguishable from the *Forshall* case on its facts. The plaintiff's submission that her being brought to the 'canteen' in the branch where Mr. Ashcroft worked, and his frequent staff parties at the Anchor bar, somehow created a special relationship akin to that in *Forshall* is, in my view, unconvincing.

AIB and the "R affair" and the "C affair"

47. It was a part of the plaintiff's case that AIB was on notice of Mr. Aschroft's fraudulent propensities by reason of two incidents that had taken place in the years 2000 and 2001 respectively. With a view to preserving the confidentiality of the bank customers in question, Mr. R and Mr. C, I will refer to them by their initials and also describe the incidents concerning them as the "R affair" and the "C affair" respectively. I have examined the documentation in relation to these events, and I have considered the intense cross-examination of Mr. Tom Connolly, former regional manager with AIB, with regard to these events.

48. As regards the " R affair", I have read a copy of an AIB internal audit report dated 14 March 2000, which concerned these events. It indicates that a bank account at AIB, Mallow, was opened on behalf of Mr. R, who apparently lived in the United States, by a niece of Mr. R, who herself worked at the branch. The account was opened with a single lodgement for approximately IR£112,000, made up of two cheques payable to Mr. R and drawn on the account of a solicitor's firm. Ms. R, it seems, failed to have the necessary documents opening the account properly completed; in particular, the necessary money laundering documentation was not filled out, and a form relevant to Non-Resident DIRT exemption was not completed.

49. On the 8th October, 1999, a withdrawal of £75,000 in cash was made. The required advance notice for a large withdrawal under money laundering legislation was not given. Mr. Ashcroft was involved in this withdrawal. His manager was on leave at this time, but on his return, he requested Mr. Ashcroft to obtain written confirmation from Mr. R that he received the proceeds and as to the fate of the funds. It is not entirely clear who had called to the bank to collect the cash, but nothing turns on that.

50. On the 10th February 2000, at a time when Mr. Ashcroft had not given his manager the necessary confirmation in relation to the first withdrawal, there was a further withdrawal for the balance of the cash in the account (approximately £38,000) and the account was closed. Again, the required notice had not been given.

51. Mr. Ashcroft was interviewed on the 16th February, 2000 by the internal audit team. As he was interviewed in Middleton, it is clear that he had already been transferred from Mallow to Middleton at the time of the interview. I mention this because it was suggested on behalf of the plaintiff that he may have been moved because he was under a cloud of suspicion. This seems to me unlikely from all the circumstances, including the dates. It appears from the record of this interview, appended to the audit report, that Mr. Ashcroft was a family friend of the entire R family. Mr. R, who was living in the United States was, according to Mr. Aschroft, having marital and health problems. Apparently, Ms. R (the bank employee) handed Mr. Ashcroft a signed debit and he paid the money in cash to a Mr. JR, brother of the account-holder. When asked whether he was suspicious of the transaction, Mr. Ashcroft stated that he was not aware there was a requirement for him to report large withdrawals, but rather lodgements. He also said that he had received the requested confirmation from Mr. R that he had received the funds two weeks before this date. He said the brother of Mr. R also presented himself at the branch to receive the second tranche of cash, the closing balance.

52. I note also that there is a report dated the 17th February, 2000 from Mr. Ashcroft in which he gave a written account of matters, in the course of which he mentioned being questioned by his own manager over the IR£75,000 cash withdrawal and that "he gave me a background of which there might have been a question mark over the way [Mr. R] had been conducting his affairs".

53. There is some discussion in the audit report of a letter dated the 17 January, 2000 from Mr. R, confirming he had received the funds. Apparently, there was a delay on Mr. Ashcroft's part in furnishing this to his manager after its receipt, but a copy had been furnished to his manager as of the 25 February, 2000. The court has seen a copy of this letter. When asked about why had had not immediately handed this to his manager, Mr. Ashcroft said that as he received it on his last day of work in Mallow, he had forgotten.

54. It is clear to me that the concern of the internal audit at that time was with regard to the completion of the paperwork legally required under the money laundering requirements, both at the time of the opening of the account (which was opened by Ms. R), and at the time of the cash withdrawals. There is a criticism of Mr. Ashcroft that he "has been less than co-operative in complying with instructions (issued since Oct 99) to obtain written confirmation" from Mr. R as to his receipt of the cash and his reason for obtaining it. There is also criticism of him for engaging in the second transaction without advising his branch manager, despite the fact that he knew that the latter "had unease concerning the pervious transaction for IR£75,000 in Oct 99". However, the conclusion of the audit report is simply that Mr. R be written to, seeking various information. Mr. Ashcroft had been given a formal warning on the date of his interview. However, from my reading of the documents, there was no suggestion or suspicion at that time that Mr. Ashcroft himself had misappropriated either or both of the two cash sums in question. The concerns related entirely to the fact that there had been two large cash withdrawals without the appropriate paperwork required by money laundering legislation having been filled out, in order to ensure that these funds were not being used by Mr. R for money laundering purposes.

55. The "C affair" involved a customer, Mr. C, who had apparently lodged a sum of money at the Mallow branch with instructions that it be used to purchase shares. This was not done. A letter dated the 16th July, 2001 written by Mr. Connolly to Mr. C shows that the bank apologized for "poor customer service" and paid compensation for the loss that was occasioned by the instructions not having been followed i.e. the profit he would have realized from the sale of the shares. A document entitled "file note" indicates that the client, Mr. C., had called to the branch to sell three different share holdings, but that the official he dealt with failed to ask him to sign the necessary "CREST Transfer" form. The share deals were passed on to Mr. Ashcroft who failed to contact the client to get him to sign the additional forms. Six weeks later, the client called to the branch seeking settlement from the share sales and discovered the transactions had not taken place. He was very annoyed and wrote to the branch, and the Court has seen his letter of

complaint dated the 2nd July, 2001. The branch then processed the sale at a loss of IR£2,781.05. It is clear from the documentation, again, that there was no suggestion or suspicion that Mr. Ashcroft was misappropriating funds. Rather, the problem was that he had failed to implement a customer's instruction to sell shares.

56. Neither the "R affair" nor the "C affair" show that AIB had any knowledge of fraudulent dealings by Mr. Ashcroft, nor do they show that they ought to have had a reasonable suspicion that he was defrauding customers of the bank by misappropriating funds entrusted to him. It follows from this finding that I cannot anchor any liability on the part of AIB on any actual or constructive knowledge that Mr. Ashcroft was engaging in fraud upon the customers of AIB.

The plaintiff's case in negligence

57. Apart from the alleged liability based on negligent misstatement on the part of Mr. Carroll (which I have rejected above), and the alleged knowledge of AIB of Mr. Ashcroft's fraudulent propensities (which I have also rejected above), the plaintiff's case in negligence was that the first, third and fourth defendants were liable to her in respect of certain losses (a) by way of direct liability, and/or (b) by way of vicarious liability.

58. I propose to group the plaintiff's complaints and deal with the pleadings, the evidence and the issues of liability in relation to each complaint. I preface this by saying that an unusual feature of the case was that the alleged loss in respect of each of the claims was not immediately apparent; this was not a case where there were obvious frauds and obvious losses, with the only issue being whether, in law, the remaining defendants were liable for those losses. It was a central plank of the defendants' cases that the plaintiff could not in the first instance establish loss on many of the claims on the balance of probabilities, even though there were undoubtedly oddities and irregularities in the handling of certain transactions within AIB. Obviously, questions of vicarious liability and proximity in negligence become somewhat academic if no loss was actually caused to the plaintiff. Accordingly, while this judgment is not concerned with the quantification of loss and deals only with liability, I would consider it a minimum condition of liability that the plaintiff must show on the balance of probabilities that at least some loss was caused under each heading. Irregularities and oddities in the manner in which Mr. Ashcroft dealt with monies connected with their purchase and running of the Anchor Bar would not per se amount to the establishment of loss and fraud.

The two cheques connected with the proceeds of the sale of Isaac Bells in 1999

59. The plaintiff's first complaint related to two cheques connected with the sale of Isaac Bells and the purchase of the Anchor Bar in 1999. The court had a copy of each of the cheques. The first cheque dated the 17th May, 1999 was drawn on Anne Condon Bank of Ireland account and was payable to Anne Condon, in the amount of IR£87,000. The second cheque dated the 18th May, 1999 (one day later) was drawn on the Frank Buttimer solicitor's client account and payable to Anne Condon, in an amount of IR£19,148.97.

60. The story of these two cheques falls to be considered within the larger story regarding the purchase price of the Anchor Bar. It was pleaded that while plaintiff had agreed a price of IR£210,000 with the O'Leary brothers, the true price was IR£150,000 and that she had been induced by Mr. Ashcroft to pay more than her agreed 50% of the purchase price. This seems to have been based on the recording of a figure of £140,00 in a document from the relevant solicitor, Helen Burke, who handled the purchase of the Anchor Bar.

61. The plaintiff's evidence concerning the events leading up to the purchase of the Anchor bar and the financial arrangements concerning the payment of the purchase price was, in my view, not reliable. She gave inconsistent accounts of where she had first met Mr. Ashcroft. She gave an account of having "bargained" with the vendors of the Anchor Bar to achieve a purchase price of IR£210,000 instead of IR£230,000, having gone across to the Imperial Hotel for the negotiation and having returned from there to the offices of one Barry Lynch, accountant, where Mr. Aschroft and Mr. Carroll, the second defendant were present. The plaintiff subsequently accepted that she had not managed to achieve the IR£210,000 price at that negotiation in the Imperial Hotel but rather that the vendors had accepted that price some days later. I have also found, above, that no such meeting took place, or at least not one at which Mr. Carroll was present (and indeed I am of the view that Mr. Lynch did not attend any such meeting either). The plaintiff said that, having received the cheque for IR£87,000, she brought it to a meeting with Mr. Ashcroft and Mr. Carroll in the latter's office, located at the top of a windy stairs and that she slid the cheque on the table to them; she also said that she signed lots of blank documents on that occasion. Her description in that regard was quite vivid. However, later in her evidence, she thought that this meeting might have concerned the taking out of the renovation loan the following year (2000) and that this was when she signed lots of blank documents and said that she was very confused as to what happened at each of the meetings.

62. It may be noted that her claim that she signed lots of blank documents, and could not recollect on which occasion she had done so, made it impossible for her evidence as to the authenticity or context of signature on numerous key documents in the case to be meaningfully tested. This arose in a context where she had at various times suggested that her signature was forged on certain documents.

63. Further, the case she was making about the two cheques in question shifted considerably over the course of her Garda statement, her pleadings and her evidence of five days at the hearing. It may be noted that AIB bank itself investigated this matter in 2002, and offered to pay £65,000 to her, this being the amount which could not be traced through the documentary evidence to bank accounts to her credit with regard to those two cheques. This offer was refused by her. She told the gardaí, and pleaded in these proceedings, that she had not received the benefit of those two cheques at all. In revised particulars delivered on the 27 October 2015, the plaintiff made the case that she had not had credit for a total of IR£39,232 in relation to those cheques. In a revised report of Ms. Clare Cowhig, the case was made that she had not had credit for IR£21,267 in relation to those cheques. In the opening by counsel, it was suggested that the plaintiff did get value of the IR£87,000 cheque. In her evidence, at one point she accepted in cross-examination that she had got value for the IR£87,000 cheque in its entirety. Finally, in written submissions at the conclusion of the evidence, it was suggested that IR£67,000 was stolen.

64. Incidentally, the plaintiff gave evidence that she did not recollect AIB having made any offer to her. Mr. Russell, called on her behalf, confirmed that the plaintiff was at a meeting at which she was made an offer from the Bank of IR£65,000 after they had carried out internal investigations and concluded that they could not definitively establish where this amount had gone, in connection with the two cheques for IR£87,000 and IR£19,148.97 respectively. He said she was mistaken when she said in evidence that this never happened or that she had forgotten it. The Court has also seen a letter dated 12th January, 2004 in which the bank made a written offer in this amount to the plaintiff. Mr. Connolly gave evidence of the meeting and letter, and indicated that the Bank's strategy at the time was to give customers the benefit of any doubt as to where any monies not accounted for had gone, and to make offers accordingly.

65. A certain amount of documentary evidence was before the Court, which made it possible to ascertain the fate of the two cheques, but only up to a certain point. These documents make it clear that approximately IR£14,148.97 of the cheque for IR£19,148.97 cheque was lodged to the plaintiff's own account (092 at Mallow), having gone (irregularly) in the first instance through

the manager's "Sundries" account (no. 99942484). The remaining IR£5,000 had been given out in cash. The question is who received that sum in money in cash. There was a lodgement docket in relation to the IR£14,147.97 lodgement/ IR£5,000 cash withdrawal which bore the plaintiff's signature. She insisted that she did not withdraw IR£5000 in cash at this time.

66. As regards the IR£87,000, also made to Anne Condon, this was lodged (again irregularly) to a manager's account in Mallow (account 99944-673). From here IR£27,000 and IR£28,000 were paid out by way of two cash withdrawals on the 17th May, 1999. Sums of IR£12,000 and IR£15,000 were paid to the account of O'Flynn Exhams, in circumstances where the solicitor acting for the plaintiff and Mr. Ashcroft in the purchase of the Anchor Bar (Helen Burke) was employed at that firm. A sum of £5,000 was also paid out in cash. When AIB investigated these two cheques in 2002/3 and made an offer to the plaintiff of IR£65,000, this sum was arrived at on the basis that (a) £5,000 of the smaller cheque could not be accounted for; and (b) the sums of £12,000 and £15,000, paid to O'Flynn Exhams, must have gone towards the purchase of the Anchor Bar, but the rest could not be accounted for i.e. the remaining IR£60,000. Mr. Connolly said that the bank's strategy at the time was to give all customers the benefit of the doubt with regard to any sums in respect of which it could not definitely be proved they had received value.

67. When Mr. Tom Connolly, former regional director at AIB was cross-examined, he accepted that the various reconciliations of the bank's internal accounts at the end of May 1999 did not appear to have picked up various irregularities, including the unusual lodgement of a cheque in Ms. Condon's name to the 673 account, and/or the fact that two significant cash withdrawals from the 673 account took place on the day before the IR£87,000 cheque was actually lodged; and that there also appeared to have been a delay of two months in the lodgement of one of the sums to an O'Flynn Exhams bank account (between early June and late July 1999). If the plaintiff had in fact been caused a loss by reason of irregularities upon this account, it seems to me that AIB would be liable to her for any such loss. However, proof that the plaintiff had in fact suffered a loss was problematic. The plaintiff was inviting the Court to draw the inference from the fact that there were cash withdrawals from the £87,000, to the conclusion that it was Mr. Ashcroft who had received the cash.

68. It seems to me that she relied upon two matters for the drawing of this inference. The first was that she said she did not receive the cash, or did not recollect receiving the cash. However, the plaintiff's memory was shown to be flawed in many other aspects of her account. The second matters related to the purchase price for the Anchor Bar. The plaintiff was in effect inviting the Court to draw the inference that Mr. Ashcroft who had pocketed some of her money and then only paid the vendors IR£140,000, which is why that figure appeared the solicitor's document. The pub was in fact purchased in 1999; that much is also certain. It seems to me that if the plaintiff had, as she related with some degree of pride, driven a hard bargain with the O'Leary brothers down from the agreed price of IR£230,000 to IR£210,000, there can be no question that they ultimately accepted IR£140,000 for the Anchor Bar. It seems to me that what is likely to have happened is there was a part-cash payment, in order to avoid the full stamp duty payment in respect of the purchase. That being so, it seems to me likely that the monies provided by the plaintiff did in fact go to the purchase and stocking of the Anchor Bar, and that it is unlikely that she was defrauded of those monies by Mr. Ashcroft. I am not satisfied on the balance of probabilities that it has been established that there were certain parts of those two cheques for which she did not receive credit. It is possible that this happened, but it is not established on the balance of probabilities, and in fact it seems to me that in all the circumstances the money was used with regard to the Anchor Bar. It follows from my finding that loss has not been proved on the balance of probabilities that I do not consider that AIB have any liability to the plaintiff arising out of these two cheques.

69. Further, as regards the third and fourth defendants, I cannot see how Bank of Ireland or Mr. Carroll could possibly have any legal liability for the manner in which these cheques were handled within AIB even if there had been loss arising from this. The plaintiff initially said that she gave the cheque for IR£87,000 to Mr. Carroll and Mr. Ashcroft at a meeting in Mr. Carroll's office at the top of windy stair, but as noted, she later doubted her own evidence in this regard. In any event, even if Mr. Carroll was present at a meeting where such a cheque was given to Mr. Ashcroft, I cannot see how this would fix him or his employer with liability for the internal AIB dealings with the cheques.

The complaint relating to the IR£150,000 loan for renovation of the Anchor Bar in the year 2000

70. The plaintiff's second claim related to the bank loan of IR£150,000 provided in the year 2000 by Bank of Ireland for the renovations done to the Anchor Bar, including the development of two apartments in the upstairs of the premises. Mr. Carroll was directly involved in the granting of this loan by Bank of Ireland and did so within the course of his employment. The loan was granted to Mr. Ashcroft and the plaintiff in their own names and to the Dublin Rovers company. In the statement of claim, it was pleaded that in breach of the agreement Mr. Ashcroft fraudulently caused the funds to be transferred into an account in Douglas in his own name; and that apart from four payments, no monthly repayments were made.

71. There are some slightly puzzling aspects with regard to the documentation in relation to this loan. For example, while the loan was offered on the 17th August, 2000 in order to facilitate the renovations, another letter dated the 18th August from the architectural and planning consultant indicated that the work had already been carried out. This may be explained by Mr. Carroll's evidence that Mr. Ashcroft had financed the renovations from his current account; the loan monies would then have been used to replenish the amounts temporarily borrowed from there.

72. However, that is, in my view, as far as the issue goes. First, the plaintiff accepts that she signed the facility letter. Secondly, with regard to the two withdrawal/drawdown dockets in relation to this loan (for IR£110,000 and then IR£40,000), the plaintiff's evidence was inconsistent in a very significant matter. According to the evidence of Peter Russell, on at least two separate occasions in the period 2002/03, she instructed him that she did not sign those withdrawal dockets. It was because of these instructions that Mr. Russell wrote to AIB asserting on her behalf that the signatures were forged. However, in evidence before me, the plaintiff accepted that the signatures were hers and sought to imply that she had never instructed Mr. Russell that the signatures were forged. I note that it was pleaded in the Statement of Claim that she had been requested to sign withdrawal slips in advance in respect of the mortgage loan funds, which she did, on agreed terms the slips would only be used as to the use and application of the funds as agreed i.e. the renovation. Thirdly, there was a letter from solicitor Helen Burke confirming that it was in order to release the IR£150,000 to the borrowers and not the builder. Fourthly, the architects' certificates confirmed the work to have been done. Fifthly, the plaintiff gave evidence that the work was in fact done to the Anchor Bar in the summer of 2000 over a number of weeks, and that the bar was closed during this period. Accordingly, the plaintiff and Mr. Ashcroft got a loan for renovations and the renovations were carried out; it is difficult to see the basis for any claim for loss arising from these events.

73. The source of the plaintiff's complaint about this loan may well be Mr. Russell. Mr. Russell even in his evidence to the Court continued to maintain that this loan was "dubious" because only four repayments had been by Mr. Ashcroft in respect of the loan and because the bank had not, in his view, pursued repayment in the normal way. However, the internal credit committee documents show that there were discussions between Mr. Carroll and Mr. Ashcroft about payment of the loan, with the latter repeatedly reassuring the former that it would be attended to. Mr. Russell and the plaintiff appear to believe, on the basis of having been told so by Mr. Keegan (or perhaps told by Sergeant Fogarty that Mr. Keegan had told him, which is second- or third- hand hearsay), that Mr.

Keegan was paid only IR£60,000 (not IR£150,000). From this, they have drawn the conclusion that Mr. Ashcroft may have appropriated the balance of the money (the difference between IR£150,000 and IR£60,000) for himself. But if that were so, it is the Bank of Ireland's loss rather than the plaintiff's loss. There is no suggestion that Bank of Ireland has pursued or is pursuing her for the loan.

74. As I have found that the plaintiff has not established any loss to herself arising in connection with this loan, it is not necessary to consider any issue of liability on the part of the first, third and/or fourth defendants in relation to it.

The purchase of Sunview Terrace in 2001

75. This is a bizarre claim. It is pleaded that the plaintiff intended to buy the Sunview property for IR£70,000 and renovate it for IR£30,000; that Mr. Aschroft fraudulently and falsely showed ACC bank that she had IR£30,000 in her account so that she could get the mortgage; that she took the loan and purchased the house; and that because she did not have the funds to renovate it, she was forced to sell the property, suffering a "significant opportunity loss".

76. It is clear from the contemporaneous documentation that the plaintiff needed to show ACC bank that she had IR£30,000 in her bank account in order to get the loan for the purchase of Sunview Terrace. She did not have that IR£30,000. Accordingly, for 24 hours or less, a sum of IR£30,000 was moved into her account by Mr. Ashcroft, in order to create the impression that she had the funds, and so as to provide comfort to ACC bank. The plaintiff admitted in evidence that she knew that Mr. Ashcroft had done this. She was therefore a party to a deception practiced upon ACC. She refused the accept this characterisation of the situation, but it is the harsh reality that she knew that a lie was being told to ACC bank on her behalf and went along with it. She later sold the house at a profit of approximately IR£22,000 and now complains that she would have sold it for more if she had been able to renovate it as planned.

77. The plaintiff's behaviour in permitting a deceit to be practiced upon ACC bank on her behalf reflects extremely badly upon her, and it is somewhat noteworthy that she did not appear to think that she had done anything wrong in this regard. I will confine myself to stating that the plaintiff has not proved a loss in this regard, let alone a loss for which the first, third or fourth defendants could possibly be held liable.

The claim relating to the Anchor Bar Takings

78. This, together with the plaintiff's claim relating to her half-share of the Anchor Bar, discussed below, appear to me in reality to be at the heart of the plaintiff's claim, which was in essence that she trusted her entire savings (the proceeds of the Isaac Bell sale) to Mr. Ashcroft, put in two years of extremely hard work at the Anchor Bar, and came out of the whole episode without a penny to her name.

79. It was pleaded at paragraph 22 of the Statement of Claim that the plaintiff was defrauded by Mr. Ashcroft "of all monies earned while she was involved in the Anchor Bar", a very far-reaching claim indeed. It was also suggested several times on behalf of the plaintiff that the Dublin Rovers account had been used as "an instrument of fraud".

80. The bank accounts primarily connected with this claim were: the Dublin Rovers account in Ulster Bank, which was set up in December 1999; and the plaintiff's AIB Mallow 258 account, which was used as a business account pending the opening of the Dublin Rovers account. It also appears that there was some cross-fertilisation between the two accounts even after the opening of the Dublin Rovers account because direct debits to suppliers had been set up on the AIB 258 account and lodgements of till takings were made into the Dublin Rovers account and, from there, sums were transferred to the 258 account in order to meet the direct debits.

81. The starting point of the plaintiff's case in this regard appears to have been her overall impression that although the business of the Anchor Bar was operating very successfully, at least while she was working behind the bar and before Mr. Keegan took over, she did not appear to be reaping the benefit of the profit. She said that she initially received £200 in wages per week, although she was working very long hours. She gave evidence that she had accepted this wage because she thought at the time that she had to pay Mr. Ashcroft back for a sum of IR£15,000, because she thought that he had put IR£15,000 more into the purchase of the Anchor Bar than he did. This This is difficult to reconcile with her view that she had put all her money at that time into the Anchor Bar, including the stocking of the bar. If she had paid approximately £90,000 towards the purchase of the bar, and she had paid the remainder of her money (approximately £16,000) towards stocking the bar, her contribution would have matched 50% of the purchase price of £210,000 and she would have owed Mr. Ashcroft nothing.

82. In any event, the plaintiff gave evidence that she herself collecting the takings from the till and counted them, and that she gave them to Mr. Ashcroft on a weekly basis to be lodged. She said that there was a plan initially that they would meet weekly in order to verify the cash takings, but that this did not last. She had kept certain diaries which recorded the takings also. The plaintiff in her evidence in chief was brought through the Dublin Rover (Ulster Bank) account statements and seems to have accepted that the level of lodgements, at least for the period of time through which she was brought in evidence, broadly matched the level of takings that she recalled. In cross-examination, she also accepted that the takings as shown in a number of diaries kept by her more or less corresponded with the lodgements to the Dublin Rover accounts, again for that period of time.

83. It may be noted that no VAT returns were ever seen by either of the two accountants who gave evidence on behalf of the plaintiff, and none (or indeed any Revenue documents of any kind) were put before the Court. The plaintiff had kept the till rolls for the Anchor bar from the relevant period, but these were never systematically analysed on behalf of the plaintiff. One would have thought that fairly obvious exercise, in order to establish a shortfall in the lodgements, would be to compare the till receipts with the bank statements for the two relevant bank accounts. The plaintiff's explanation for this not having been done was the expense of having this exercise carried out. However, the plaintiff did rely upon reports prepared by a Ms. Clare Cowhig, accountant, specifically concerning the takings of the Anchor Bar. During the hearing, in order to try to obtain some precision as to the specifics of the claim related to the takings from the Anchor Bar, the court gave leave for the amendment of the statement of claim to plead that Mr. Ashcroft had failed to lodge the takings from the Anchor Bar to the plaintiff's account ending 258 in AIB Mallow or the Dublin Rovers account in Ulster Bank, "as particularised in a document prepared on her behalf by Ms. Clare Cowhig entitled 'Analysis of Bank Lodgements".

84. Ms. Clare Cowhig gave evidence that she had examined the bank statements relating to three bank accounts; the Dublin Rovers (Ulster Bank) account; and two Anne Condon AIB accounts, ending 017 and 258 respectively. On the assumption that there should have been weekly lodgements of the takings, her methodology was essentially to note any particular weeks where the bank statement showed that no lodgements had in fact been made. However, she first excluded (a) any weekly gaps where there a larger than usual lodgement was made in the subsequent week, which might cover both weeks; and (b) any lodgements from Dublin Rovers account to the 258 account which clearly came in to fund the direct debits which had been set up on the 258 account. Having identified apparent gaps in lodgements, she then "extrapolated" where the missing money might be, by calculating from the average

weekly sales set out in spreadsheets prepared from the plaintiff's diaries. Her calculations led her to the conclusion that approximately IR£58,000 was missing for the year ending July 2001, and a further IR£74,000 missing for the year ending July 2002. As regards the Anne Condon 017 account in Mallow, her evidence was that there was a very odd pattern emerging from the bank statements, whereby large sums of money would be lodged and withdrawn in the same day.

85. Ms. Cowhig also gave evidence that for the plaintiff to have had the entire exercise done of reconstructing the figures in 2002/2003 from the till rolls and the bank statements, and dealing with any arrears of tax and filing of returns, would have been in excess of IR£20,000. This was in the context of the plaintiff's having earlier given evidence that she could not afford to engage in this exercise at that time.

86. In cross-examination, it was put to her that her particular methodology (the weekly gap methodology) could greatly over-state the figures. For example, on her view, the takings in March 2001 should have been approximately IR£45,000, which would be equivalents to the Christmas 2000 takings, and yet one would not expect March to be as profitable as Christmas. She stood over her methodology. She stated that it had been arrived at by a process of "fair reasoning" and that while it might not be 100% accurate it was taking a "good stab" at uncovering the issue.

87. I am conscious of the fact that, at this stage of the proceedings, I am dealing only with liability and not with loss, and that what it is necessary for the plaintiff to show is (1) that it is likely that there was at least some loss in connection with the takings from the Anchor Bar, rather than a precise figure of that loss; and (2) that the AIB would be liable for any such loss. It seems to me that, even if it could be established that Mr. Ashcroft was stealing the Anchor takings, or some of them, attributing liability to AIB is very problematic.

88. It is worth pausing to consider the alleged manner in which the fraud is said to have been carried out. The claim appears to be essentially that Mr. Ashcroft was pocketing some of the till takings between the time he received them from the plaintiff and before he lodged them to the bank. Thus, if there was theft on his part, this took place before the money ever reached AIB or Ulster Bank. Further, his receipt of the cash takings was in his capacity as partner in the business of the Anchor Bar, and his obligation to lodge them was in his capacity as partner in the business of the Anchor Bar. If he fraudulently appropriated cash before it reached AIB Mallow, I cannot see how this can be laid at the door of AIB. They could not possibly have known, nor as bankers should they have reasonably have been expected to know, what the correct figures were for the takings of the Anchor Bar. I have considered the leading authorities cited to me in respect of proximity and duty of care, including *Ward v. McMaster* [1988] IR 337, *Glencar Explorations v. Mayo County Council (No.2)* [2002] 1 IR 84, *Beatty v. Rent Tribunal* [2006] 2 IR 191, *Bates v Minister Agriculture* [2012] 1 IR 247, and *McGee v Alcorn* [2016] IEHC 59, as well as those specifically concerning the duties of banks, including *Brennan v. Bank of Ireland* [1995] 5 JIC 2301, *Towey v Ulster Bank Limited* [1986] IEHC 4, *Kennedy v AIB* [1998] 2 IR 48, *Tulks Co-operative Livestock Mart v. Ulster Bank* [1983] IEHC 2, and *Whelan v. AIB* [2014] 2 IR 199. None of these, in my view, come anywhere close to supporting the far-reaching proposition that a bank is liable for theft or fraud committed by one business partner in respect of another in circumstances where the money is wrongfully appropriated before it even reaches the bank; nor do they support the proposition that the bank has a general duty to a customer to monitor the lodgements and withdrawals from the customer's account, in circumstances where the documents (such as cheques, lodgements and withdrawals) appear regular on their face. I do not see how the fact that Mr. Ashcroft worked in AIB could alter the nature of the bank's duty to the plaintiff, unless either the bank was on notice of fraudulent propensities on his part (which I have found was not the case) or the bank had assumed an unusual and special relationship with the plaintiff which warranted the imposition of such liability (which, again, on the facts, is not sustainable). Nor can I see any basis in vicarious liability, no matter how the doctrine is stated, on the part of AIB for theft by Mr. Ashcroft of the takings in a pub business in which was engaged with the plaintiff quite separately from his employment as bank official.

89. Further, I cannot see how any stateable case can be made that Mr. Carroll, who had provided an introduction to Mr. Ashcroft in 1999, could be legally liable for any such fraudulent activity, even if Mr. Ashcroft was in fact pocketing some of the takings before they reached the bank accounts in AIB and/or Ulster Bank; still less so, Mr. Carroll's employer, Bank of Ireland.

90. I am therefore of the view that even if the plaintiff could establish a loss in consequence of Mr. Ashcroft stealing money from the takings instead of lodging it to bank accounts as he was supposed to do, no liability could in any event be laid at the door of the first, third and fourth defendants in this regard.

The claim relating to the Dublin Rovers cheques (Ulster Bank)

91. At paragraph 23 of the Statement of Claim, it was pleaded that the defendants were responsible for "improperly cashing or otherwise honouring cheques drawn from the Dublin Rover Ltd. Account at Ulster Bank Mallow or alternatively crediting Dublin Rover Ltd account cheques to accounts which they knew or ought to have known could not have been authorised payees".

92. This complaint appears to have originated with Peter Russell's complaint about 12 particular cheques drawn on the Dublin Rover account. As I understand the position, the paper trail in respect of these cheques shows that 6 of them were lodged to the plaintiff's AIB Mallow 258 account; 2 were lodged to her account 017 at Middleton AIB; and 1 was negotiated for cash at Middleton and then lodged to her 258 account. Thus, 9 of the 12 cheques in respect of which she makes complaint actually went to her own accounts. As to the remaining 3 cheques, 1 was made out to AK Construction, negotiated for cash at Middleton and lodged to the account of Mr. Andrew Keegan; 1 was made payable to the sister of Mr. Ashcroft; and 1 was payable to AK Developments (signed by Mr. Ashcroft) but it is unclear how the money was obtained.

93. Again, this complaint is somewhat bizarre. It appears that Mr. Ashcroft was an authorised signatory on the Dublin Rovers Account, as one would expect with a co-director of the company. There would have been no need for Mr. Ashcroft to forge the plaintiff's signature on cheques when he himself was an authorised signatory on the account in any event. Further, it would be rather odd if he were to forge her signature on cheques, and then lodge most of the cheques to accounts in her name. It would be an odd attempt at fraud indeed for a person to forge a person's signature on a cheque and then use the cheque to lodge money into that person's own account.

94. The plaintiff alleged that she did not sign any of the cheques in question; but I did not find the plaintiff's evidence reliable with regard to her signature on documents, particularly having regard to (a) her inconsistency regarding her signature on documents general, and (b) her inconsistency and vagueness of evidence as to when she signed a bundle of blank documents. As to the suggestion that the AIB should have known that the payees were not appropriate, it seems to me again that a bank is not generally required to monitor the pattern of lodgements and withdrawals in respect of an individual's personal bank account with a view to ascertaining whether a person's business partner might be defrauding them.

95. In the circumstances described, where I am not persuaded on the evidence either of fraud, forgery or loss, I find that there was no liability on the part of the third and fourth named defendants.

The complaint relating to the plaintiff's failure to obtain her rightful half-share of the Anchor Bar
96. This complaint also lies at the heart of the plaintiff's grievances in respect of Mr. Ashcroft. In crude terms, the plaintiff says that she invested money in the region of IR£106,000 into the Anchor Bar; that it increased in value to approximately OR£400,000-IR£500,000 as of 2002, but that she did not receive her rightful half-share of this value when she left the business.

97. The plaintiff gave evidence concerning her decision to stop working in the Anchor Bar in approximately mid-2001, and with regard to events between that time and the commencement of the Garda investigation into Mr. Ashcroft, approximately mid-2002. As with all of her evidence, the sequence of events was vague and inconsistent. She gave a narrative in which she described all going well with the pub at the end of 1999 and in 2000, but that she became increasingly suspicious of Mr. Ashcroft in 2001 because he was not answering her questions about money satisfactorily; that she developed stress to the point where she was admitted to hospital with a suspected cardiac condition; and that she left the running of the bar soon thereafter in the summer of 2001. She gave a vivid account of events in the summer of 2002, involving her taking courage in her hands with regard to the unsavoury characters, including drugs dealers and the like, who were then frequenting the Anchor Bar, and of going down to the bar and having the locks changed on two different occasions. A significant problem with this sequence of events emerged when her doctor gave evidence from his medical notes, indicating that the date of the health problems she described was the year 2000, not 2001. This removed the link she had put forward between her ill-health and her departure from the pub. Further serious questions marks were raised about her narrative that she left the Anchor Bar in a condition of extreme suspicion about Mr. Ashcroft when it emerged, on her own evidence, that after she left the Anchor Bar in the summer of 2001, she moved to an apartment in Cobh belonging to Mr. Ashcroft where she lived rent-free, and also received wages from him, in an amount of approximately double what she had been earning in the Anchor bar. These wages, she said, were for her carrying out interior design on this and other properties owned by him. She then described how she attempted to establish a motor car accessory trade in a shop, again funded in part by Mr. Ashcroft; and that she purchased, with financial and other assistance from Mr. Ashcroft, the Sunview Terrace property, before selling it again at a profit of approximate IR£22,000. The latter events were discussed earlier in connection with the "Sunview Terrace" claim.

98. She also referred to different lump sums received by her from Mr. Ashcroft over this period, and in this regard various figures were mentioned; including IR£6, 000 with which to establish her business in Cobh; IR£5,000 and IR£3,000 for purposes she could not recall; IR£4,000 to pay a booking deposit on Sunview; IR£3,000 to pay the balance of the deposit on that house; and (in April 2002) enough money to enable her to pay of all outstanding monies in the following AIB bank accounts: IR£11,739.24 on the 017 account in Middleton; IR£2,444.12 on her 092 Mallow account; and IR£4,000 left over to deposit in a new Ulster Bank account. Accordingly, it seems that she was the beneficiary of considerable financial largesse on the part of Mr. Ashcroft during the period when, she now claims, she was deeply suspicious of him.

99. Of some importance in this regard also is the conversation between the plaintiff and Mr. Carroll in November 2002, to which I made reference earlier. She had recorded this conversation and the Court had two transcripts of the recording. It is clear that during this conversation, Mr. Carroll was suggesting or advising that she should sell the Anchor Bar at that time, and that this would put an end to her problems, but that the plaintiff herself was refusing to do so. She justified this in the conversation, and in her evidence to the Court, as being because she did not know what might "come back and bite her" in terms of monies owed and because the pub had lost its licence at this time, although she accepted that she had received advice (which seems likely to have been advice from or through her solicitor Mr. Harvey) that she could get another licence from the Circuit Court if she were prepared to spend £10,000, and that this would put considerable value back into the pub. She said (in the recorded conversation) that did not want to do that, that she wanted "nothing to do with the place". She also gave evidence that some interest was expressed to her personally by potential purchasers of the George, a nearby pub, in also purchasing the Anchor bar and amalgamating the two pubs. She accepted that she did not follow up on this suggestion in any concrete way, whether by contacting Mr. Ashcroft or by taking further advice from professionals. It was in the course of cross-examination around this conversation and period that the plaintiff first indicated that she had issued proceedings against Mr. Ashcroft in 2002. She said she did not know the outcome, but that the subject-matter was similar to the present case. It appears to have proceedings directed at dissolution of the partnership and the taking of accounts. She also indicated that the landlords issued proceedings to forfeit the lease of the Anchor Bar and settlement discussions were had on the door of the court, but that she received no money at that time and the lease was forfeited. This appears to have taken place around May of 2003. It seems surprising that the plaintiff would not have received some financial settlement upon the forfeiture of the lease, given that the value of the property had substantially increased since the time she and Mr. Ashcroft had purchased it, not least because of the renovations carried out.

100. It seems to me that by the end of 2002, a situation had developed with the Anchor Bar such that the plaintiff no longer wanted to have anything to do with it, but that she was simply not prepared to take the steps required to realize its actual and/or potential value at that time, from which she could have taken her 50% share. She seems to have decided to take her chances with bringing proceedings against Mr. Aschroft. However, she now seeks to obtain the value of her half-share in the Anchor Bar from the first, third and fourth defendants. I cannot see any basis in law for this claim. The Anchor Bar was a venture entered into by Mr. Ashcroft outside his terms of employment whereby he purchased a pub with the plaintiff. Their relationship deteriorated to the point where she no longer trusted him and wanted nothing more to do with the pub. At this point in time, the plaintiff herself had the power to take the steps necessary to force a realisation of the value of the pub, but she chose not to do so. She claims that she could not afford to do so, financially, and that she was concerned about the risks, but the potential value of her half-share would have likely exceeded any outlay at this time. The outer limits of AIB's vicarious liability, on any view of vicarious liability as expressed in the authorities, and/or direct liability in negligence, cannot possibly stretch to cover liability for the equivalent of what she would have obtained from the sale of the Anchor Bar in 2002/3. The loss of the plaintiff's half-share in the Anchor Bar primarily appears to have resulted from the plaintiff's own decision to walk away from it in 2002/3.

101. For the sake of completeness, I should say that there was no liability on the part of the third and fourth defendants with regard to this claim.

Personal Injuries Claim
102. Even if there was a valid claim for personal injuries in the case, which was disputed by the defendants, I am of the view that the relevant ingredients for establishing damages for personal injury for mental injury have not in any event been established. There is no doubt that the plaintiff endured a lot of stress over the years, and particularly in 2002. At that time, she interacted with Mr. Peter Russell and Detective Garda Fogarty, and they both described in evidence her distressed condition during this period. At its height, the medical evidence was that of her doctor, Dr. O'Regan, who gave evidence that she suffered from stress and anxiety for many years after 2002, and for which he prescribed anti-depressant medication. The circumstances for obtaining damages for mental suffering have been carefully circumscribed by the superior courts and this case does not fall within the relevant parameters.

Final observations
103. The plaintiff, having invested all of her money and energy into the Anchor Bar, walked away from it in 2002, having received no lump sum in respect of her investment and a general sense that she had not been properly recompensed for her hard work. After living

on what were effectively handouts from Mr. Ashcroft for what seems to have been approximately one year, she then went to Mr. Peter Russell, and from there to make a complaint to the Gardai. This happened around the same time that customers were complaining to AIB that Mr. Ashcroft had defrauded them; and he would have been tried in respect of charges arising out of that criminal investigation if he had not disappeared without trace. It seems to me that the background of the criminal investigation has led the plaintiff to try to cast suspicion on every piece of financial dealing she had with Mr. Ashcroft with a view to establishing that she had been defrauded by him at every turn. In this, she appears to have been assisted by Mr. Russell, who was, in my view, rather hasty in reaching conclusions that Mr. Ashcroft had defrauded the plaintiff, on the basis of rather flimsy evidence. No doubt, the plaintiff's main complaint would have been against Mr. Ashcroft if he had not fled the jurisdiction. However, there is a significant distance to be travelled from the suspicions aroused by what were undoubtedly irregular, odd, and dubious practices in relation to Mr. Ashcroft's handling of documents such as cheques, on the one hand, and the proof on the balance of probabilities of liability on the part of the first, third and fourth defendants, on the other. The plaintiff has failed, in my view, to establish on the balance of probabilities most, and perhaps, all of the losses alleged by her. The factual basis upon which she sought to draw in the third and fourth defendants was not, in my view, satisfactorily proved. The basis upon which she sought to establish liability on the part of AIB for the fraud of Mr. Ashcroft would involve significant and radical extension of the duty of care owed by banks which is unsupported by legal authority.

104. Accordingly, I consider that liability on the part of the first, third and fourth defendants has not been established and it is not necessary to proceed to a "quantification of loss" module in this case.