Neutral Citation [2016] IEHC 446

THE HIGH COURT

[2014 No. 7345 P]

BETWEEN

PEBBLE BEACH OWNERS MANAGEMENT COMPANY LIMITED

BY ORDER OF THE HIGH COURT

PLAINTIFF

AND

SEAMUS NEVILLE

AND

COLM NEVILLE

AND

SEAMUS NEVILLE AND LIAM NEVILLE AND BRENDAN NEVILLE AND COLM NEVILLE AND ANTHONY NEVILLE

TRADING AS PEBBLE BEACH HOLIDAY HOMES OPERATOR

AND

BERNARD J. DOYLE AND COLIN J. DOYLE

PRACTISING UNDER THE STYLE AND TITLE

OF B.J. DOYLE AND COMPANY

DEFENDANTS

JUDGMENT of Ms. Justice Baker delivered on the 29th day of July, 2016.

1. This judgment is given in the application by the eighth and ninth defendants, a firm of auditors, pursuant to s. 52 of the Companies Act, 2014 (the "Act of 2014") that the plaintiff should provide security for their costs in these proceedings.

2. Briefly, the defendant is a firm of chartered accountants and auditors and acted as auditor to the plaintiff until it resigned from that office in February, 2011.

3. The plaintiff is the owners' management company of a development of holiday homes in Tramore, Co. Waterford, and was formerly known as Cyclegrove Limited.

4. The development of holiday homes had the benefit of a tax scheme established under s. 48 of the Finance Act 1995 and as part of the requirements for tax relief the individual units were to be available for tourists through Fáilte Ireland for the ten year period of the tax break. For that purpose the owners of the units entered into 21-year leases from 1st January, 1999, subject to a break clause which could be exercised on three months notice on the 11th anniversary of the term thereof. The leases were made in all cases to the persons named as the third, fourth, fifth, sixth and seventh defendants to these proceedings, collectively trading as the "Pebble Beach Holiday Homes Operator" ("the Operator").

5. The occupational leases contained the usual covenant on the part of the lessee to repair the premises, and a specific provision that the premises were not to be used for any purposes other than as holiday homes and other uses consistent with s. 9 of the Tourist Traffic Act, 1957. Rent was calculated in accordance with the provisions in the second schedule as the net letting income received by the lessees in the letting of the demised premises minus VAT.

6. The break option was exercised, and in or around the year 2010 the individual unit owners accepted a surrender of their respective leases and took possession of their individual unit.

7. By Transfer made on 29th February, 2000 the unit owners had acquired title to the premises, and the owners' management company joined in the deed of transfer for the purposes of granting certain rights and easements over the common areas agreed to be transferred to it by the development agreement. Under the terms of the occupational leases, the Operator as lessee covenanted to perform all of the obligations of the unit owner in respect of his or her obligations to the management company.

8. In the events, the common areas were transferred to the management company by deed of 30th December, 2009.

9. The eighth and ninth defendants are a firm of auditors and accountants who at all material times were the auditors to the management company and also acted as auditors to the Operator. It seems that up to the time when the common areas were transferred to the management company on 30th December, 2009, the management company did not collect the annual management charges in accordance with the covenant contained in the fifth schedule to the deed of transfer. Instead, the Operator collected the rents paid from time to time by tourists taking short term lettings of the units, and collected a management fee directly from the owners. The plaintiff estimates that over the period of October, 2000 to 31st March, 2010, a total of €4.1million was collected by the Operator in respect of the units.

10. Financial statements were prepared and filed with the CRO for each relevant year, and at least up to 31st December, 2009 the management company showed a nil figure for receipts and outgoings. The eighth and ninth defendants describe the management company as being "dormant" through those years until it came to take over the management of the common areas and collect the management charges to which it was entitled under the Transfer.

11. The plaintiff *inter alia* argues that the common areas should have been transferred to the management company by December, 2003 when the last unit was sold, and that from that time the management company ought to have been in receipt of the management charges pursuant to the covenant in that behalf contained in the Transfer. The auditors are said to be negligent in failing to ensure the assurance of the common areas took place at the appropriate time.

12. The plaintiff claims that the eighth and ninth defendants failed to properly ensure that the management company kept proper books of account which showed a true and fair statement of the company's financial affairs. The plaintiff also pleads that the auditors were negligent and in breach of their statutory duty as auditors in failing to ensure that the relevant portion, comprising the management charges, of the monies collected by the Operator were transferred to the management company. It is also pleaded that the auditors failed to ensure that the unit owners complied with the covenant in the Transfer, and that they negligently and in breach of duty and in breach of contract permitted or assisted in the filing of accounts which did not reflect the entitlement of the company to the management charges, which were not collected on its behalf, or passed on to it. A further part of the claim is that the auditors permitted the intermingling in the accounts of charges collected for day-to-day management of the holiday lettings and the true management charges payable to the management company under the Transfer.

13. The eighth and ninth defendants have filed a full defence in which *inter alia* it is pleaded that some or all of the claims, primarily that made in respect of charges not collected prior to 14th August, 2008 (six years before the plenary summons issued) is barred by virtue of the Statute of Limitations, 1957 as amended. These defendants also plead substantive defences with regard to the contents of the books and records of the plaintiff company, and that the loss, if any, was caused or contributed to by the acts or omissions of the plaintiff company insofar as it acquiesced in, accepted or approved, the structure by which the Operator collected the management charges.

The application

14. The eighth and ninth defendants seek that the plaintiff would provide security for their anticipated costs of the litigation pursuant to s. 52 of the Act of 2014 which is in broadly similar terms to that contained in the old s. 390 of the Act of 1963. The new statutory provisions do not provide that the security be "sufficient", but no argument is made by either party to this application that that difference has any relevance to the present application.

15. The test that an applicant for security for costs against a company must establish is clear from the authorities, and I do not propose outlining the evolution of the test as interpreted by the Irish courts. It is clear that the party seeking security must satisfy the two cumulative tests described by the Supreme Court in *Usk and District Residents Association Limited v. The Environmental Protection Agency* [2006] 1 I.L.R.M. 363 as:

> (a) The moving party has to establish that he has a prima facie defence to the claim of the plaintiffs and
>
> (b) That the plaintiff will not be able to pay the costs of the moving party if the moving party is successful in defending the claim.

16. Once the applicant for security meets these two cumulative tests, security ought to be required, but the court has a discretion which it may exercise if special circumstances are shown to exist, and the onus of establishing such special circumstances rests on the person resisting the provision of security.

17. The plaintiff relies in particular in defending this application for security for costs, on an assertion that there are special circumstances akin to those identified in an number of decided authorities, namely that the plaintiff's current impecuniosity, or relative impecuniosity, was caused by the wrongdoing of the relevant defendant in respect of which the claim is brought.

18. I turn now to consider the two requirements that an applicant for security must establish.

Do these defendants have a prima facie defence?

19. The standard that must be met by a defendant in establishing a prima facie defence does not require the court to make an assessment of liability, and as Charleton J. said in *Oltech (Systems) Limited v. Olivetti U.K. Limited* [2012] IEHC 512, [2012] 3 I.R. 396, the court must ask "*whether there is a reasonable prospect of a defence succeeding at trial*".

20. Laffoy J. in *Mike O'Dwyer Motors Limited v. Mazda Motor Logistics Europe NV (t/a Mazda Motor Ireland)* [2012] IEHC 560 at paras. 17-18 explained the requirement was to demonstrate by objective means the existence of admissible evidence, supported by relevant arguable legal submissions, which if accepted by a trial judge, would provide a defence to the claim. She quoted from the *ex tempore* judgement of Finlay Geoghegan J. in *Tribune Newspapers v Associated Newspapers Ireland*, summarised by Delaney and Mc Grath in their text on practice and procedure where she set out the requirement as follows as follows:

> *"…a defendant seeking to establish a prima facie defence which is based on fact must objectively demonstrate the existence of evidence upon which he will rely to establish those facts. Mere assertion will not suffice…. Further, the defendant must establish an arguable legal basis for the inferences or conclusions which it submits the Court may arrive at based upon such evidence….what is required for a defendant seeking to establish a prima facie defence is to objectively demonstrate the existence of admissible evidence and relevant available legal submissions applicable thereto which, if accepted by the trial judge, provide a defence to the plaintiff's claim"*

21. Hogan J. more recently in the Court of Appeal in *Pagnell Ltd. (t/a Snap Printing) v. O.C.E Ireland Ltd.* [2015] IECA 40 also adopted the judgment of Finlay-Geoghegan J., and pointed to the fact that the threshold was higher than that applicable to an application to defend a motion for summary judgment, and that the requirement was not merely that an arguable defence be shown, but the higher requirement that a *prima facie* defence be shown.

22. These defendants deny that the financial statements of the company did not show a true and fair view. For the purpose of the application, the basis of this defence is supported by an affidavit of Paul Jacobs, a forensic accountant and a partner in an independent firm of auditors, Grant Thornton. These defendants have provide supporting evidence for their assertion that even had the management charges properly so-called been segregated from the other charges, the financial evidence available does not suggest that there would have been a credit balance reflected in the accounts of the management company at the time it took over

the day-to-day running of the common areas, and took the assurance of the common areas.

23. The evidence of the forensic accountant is that the unit owners had to fund a deficit in the contribution over the relevant period, and that in addition the Operator personally invested funds in excess of €278,000 during the period.

24. The plaintiff makes a preliminary argument that as the defence was not served until after the motion was set down, I ought not to consider the plea in the defence of estoppel or acquiescence as forming the basis on which these defendants may seek to establish a defence for the purpose of this application. In order to avoid the injustice of which the plaintiff complains, I do not propose considering the question of whether the plea of acquiescence or estoppel could offer a *bona fide* defence.

25. However, I consider that the affidavit evidence is sufficient to establish a *prima facie* defence in a number of respects:

> a. There is objective evidence from an independent expert that suggests that the role adopted by the auditors to the company over the years when the Operator managed the holiday lettings does not amount to professional misconduct or a breach of the statutory and professional requirements of an auditor or accountant;
>
> b. The monies collected over the relevant period by the Operator have been shown objectively speaking not to have been sufficient to meet all necessary costs for that period, and accordingly, even had the relevant portion of the monies collected been kept in a separate account and designated as management charges, it is apparent that if these figures are accepted at trial that the plaintiff company will have suffered no loss of income, as during the relevant years it did not, and was not required to, perform the covenants for the upkeep of the common areas in respect of which the management charges were agreed to be paid;
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> c. The evidence shows that the Operator introduced a substantial sum of money for the purposes of providing for the ongoing requirements of the holiday lettings over the relevant period;
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> d. Some of the claim is arguably statute-barred;
>
> e. If it is accepted by a court that the management company performed no functions, incurred no expense, had no source of funds for the relevant period during which the occupational leases were in place, the books and accounts of the company did reflect a true and accurate picture of the financial state of that company;
>
> f. Insofar as it is pleaded that the auditors failed to ensure that the common areas were transferred to the management company at the time agreed, or within a reasonable time thereafter, these defendants have put forward a *bona fide* argument that it was not part of the function of the auditors of the management company to ensure that it took such steps as were necessary to procure the assurance to it, and such a role was one which more properly lay with the directors of the company, or possibly with its solicitors.

26. I am satisfied that a *bona fide* defence has been shown in the respects identified above. I do not consider that the defence proffered by the eighth and ninth defendants amounts to mere assertions, and I consider that these defendants have met the threshold explained by the Supreme Court in *Usk and District Residents Association Limited v. The Environmental Protection Agency,*

Inability to pay costs

27. The second of the cumulative tests which these defendants must show is that the plaintiff company will not be in a position to pay the costs of these defendants should they succeed in defending the claim. What is required is "credible testimony" that there is reason to believe the company will be unable to pay these costs.

28. These defendants have exhibited an estimate from a legal cost accountant that the costs of defending this action, assuming a six-day hearing of a professional negligence case, are likely to be in the region of a half a million euro. That report of the legal cost accountant was furnished to Grant Thornton which prepared a forensic accountant report and concluded that the last available financial information for the year ended 31st December, 2014 shows the plaintiff company has net current assets of €157,230 and net assets of €158,294. The view of the writer of that report is that the plaintiff would not be in a position to meet the probable costs of these defendants should it be ordered to discharge those.

29. The plaintiff company's accounts show difficulties in collecting service and management charges, and that there has been some disimprovement in the level of collection between 2013 and 2014. The 2014 figures show 69% of owners had either not paid their charge, or had not paid on time. The plaintiff company is described by its solicitor as suffering from "current relative impecuniosity" but she says that it could opt to levy a special charge on owners to meet the costs of the litigation should this be necessary. The proposition that a special levy could be made is one that has some attraction, but no evidence has been furnished by the plaintiff of any resolution passed at a meeting of a company that a special levy should be pursued, and no agreement has been exhibited by which the owners, the members of the company, have agreed to meet such a levy were one to be imposed. Having regard to the level of arrears, it seems unlikely in the present circumstances that the collection of the levy would be straightforward. In that regard, the management company admits that legal proceedings have been commenced against 13% of owners of the units in respect of the 2014 charges, and this fact alone would suggest that it might be difficult to collect an additional levy, and the absence of a resolution, or an agreement suggest an unwarranted degree of optimism on the part of the company that the imposition of an additional levy would readily meet the costs.

30. Further, up-to-date management accounts have not been furnished, and in those circumstances it is not possible for me to accept the broad proposition advanced by the plaintiff that its financial position is improving. I consider that the current impecuniosity of the plaintiff, albeit that it is a "relative impecuniosity" suggests that the plaintiff would not, in its current state, absent a robust and agreed formula for the collection of an additional levy, be in a position to meet the costs likely to be incurred by these defendants in defending the action.

31. I consider in the circumstances that these defendants have met the two parts of the cumulative threshold test in an application for security for costs under the Act of 2014.

32. I turn now to consider if there are any special circumstances which might influence me such that I would exercise my discretion not to direct the provision of security for costs. The primary argument made by the plaintiff is that its relative impecuniosity was caused by the act or default of these defendants in respect of which these proceedings are brought. The affidavit of Anne O'Sullivan, the solicitor for the plaintiff, sworn on 29th February, 2016, describes the plaintiff as suffering from "current relative impecuniosity" and says in general terms that this is "due to the acts and/or omissions of the defendants and each of them or either of them".

The cause of the impecuniosity
33. The onus is on the plaintiff to establish that special circumstances exist, and once again, as with the burden on the defendants and moving party under the threshold test, it is not sufficient for the plaintiff to make mere bald assertions, and it must establish by evidence and argument that its impecuniosity was caused by the wrong the subject matter of the claim. This is clear from the judgment of Finlay C.J. in *Jack O'Toole Limited v. MacEoin Kelly Associates & Anor.* [1986] 1 I.R. 277, where he said that it was not sufficient for a plaintiff *"to make a mere bald statement of the fact"*.

34. In *Connaughton Road Construction Limited v. Laing O'Rourke Ireland Limited* [2009] IEHC 7 Clarke J. set out a four part test to be met by a plaintiff who seeks to argue that an inability to pay stems from the wrongdoing in respect of which proceedings are brought, as follows:-

> *"(1) That there was actionable wrongdoing on the part of the defendant (for example a breach of contract or tort);*
>
> *(2) that there is a causal connection between that actionable wrongdoing and a practical consequence or consequences for the plaintiff;*
>
> *(3) that the consequence(s) referred to in (2) have given rise to some specific level of loss in the hands of the plaintiff which loss is recoverable as a matter of law (for example by not being too remote); and*
>
> *(4) that the loss concerned is sufficient to make the difference between the plaintiff being in a position to meet the costs of the defendant in the event that the defendant should succeed, and the plaintiff not being in such a position."*

35. There is no requirement in the authorities that a plaintiff has to establish the precise quantum of damages which it might recover against these defendants. This is clear in the judgment of Murray J. in *Framus Limited & Ors. v. CRH plc & Ors*. [2004] IESC 25, [2004] 2 I.R. 20. However, the plaintiff does have to show that the likely damages would be sufficiently close to the anticipated level of costs and would be, broadly speaking, sufficient to meet the costs.

36. The primary argument made by the plaintiff is that had the management charges been collected, or segregated following collection from other monies collected by the operator, that the management company would have available to it sufficient funds to meet the costs of the defendants. In reliance on this proposition, the plaintiff points to the fact that the development was a new development which was maintained to the high standard demanded by Fáilte Ireland, and that the common areas would in the earlier years, at least, have required little expenditure on upkeep. It says in the circumstances that a significant proportion of the sum of over €4m collected in charges between 2001 and 2010 would have remained unspent, and would now show as a healthy credit balance in the accounts.

37. Notwithstanding the fact that the development was new, I consider that some expenditure would have been incurred on the general maintenance and upkeep of the common areas and on insurance and lighting for those areas. The company expended nothing on these services during the relevant years, and collected no monies. From a reading of the Transfer it seems unlikely that the owners would have paid a sum in service charges which would have been far in excess of the anticipated expenditure for the relevant year, and the service charges are calculated as a percentage of the combined anticipated charges under several heads including insurance, maintenance and other similar expenses.

38. The key to understanding the source of income of the management company is contained in the fifth schedule to the Transfer, which identifies the means by which the "management charges" are to be estimated on an annual basis. It is clear from this that those charges were to cover remuneration, fees, charges, costs, expenses and outgoings incurred in managing the common areas in accordance with the covenants of the management company contained in the Transfer, and to provide an amount as might be necessary to reserve by way of sinking fund. It is clear that it was never the purpose of those charges that the management company would make a profit, and the sinking fund was envisaged as being earmarked to "meet the future liability of carrying out major works to the Common Areas". It is also noteworthy that clause 1(ii) of the fifth schedule to the Transfer expressed the object as far as possible that the management charges should not "fluctuate substantially in amount from time to time".

39. Ms. O'Sullivan also gives detailed evidence as to the current debtors figures, which she estimates as €143,000 for the year ending 31st December, 2015. She says this has decreased from the previous year and that her firm had engaged in debt collection litigation to recover the charges, although she says a "trend" that arrears are reducing is "continuing into 2016 with a number of settlements being negotiated". In general, Ms. O'Sullivan says that the "debt level is falling".

40. One difficulty I have in understanding the current state of the finances of the plaintiff company is that there is no up-to-date evidence of the current cash reserves and a request by the solicitors for these defendants for financial statements and current bank statements was rejected as "extraneous" in a letter of 10th March, 2016. In those circumstances I am compelled to operate on a debtor's figure of €143,000, and note in that context the expert evidence of Grant Thornton that this is a "very significant" figure in the context of an owners' management company where the sole source of income is the collection of service charges.

41. Furthermore, I cannot ignore the fact that the evidence of these defendants suggests that the amounts received in the years during which the occupational leases were in place was not sufficient to meet all outgoings, including advertising, insurance, cable television subscriptions, lighting, waste services, laundry, security and the maintenance of the common areas. Some of this expenditure will now fall on the management company following the transfer to it of the common areas, and the covenants on the part of the management company in the Transfer required it to insure and keep insured the common areas, to maintain the common areas, gardens and leisure spaces and to service the common areas including lighting and basic waste management.

42. There is uncontroverted evidence that there were insufficient funds to meet all of those expenses in the years when the occupational leases were in place, and when service and maintenance charges were collected or recouped from rents.

43. The evidence in my view therefore points to the improbability that had the management charges, or such amount as might be attributable to the management charges, been segregated from the other service charges collected by the Operators over the relevant period during which the occupational leases were in place, that there would have been a surplus, or any significant surplus to meet the amount estimated as the costs of the successful defence of these proceedings. Furthermore, had these monies been segregated and had the management company taken title to the common areas at an earlier date, the evidence points to the fact that the amounts levied would, under the Transfer, have become be payable in respect of the performance of the obligations of the types set out in the sixth schedule to the Transfer. Accordingly such elements of the ongoing charges and maintenance costs as were attributable to the maintenance and insurance of the common areas, and other matters not relevant to the holiday lettings per se would have been payable. Therefore, as the maintenance charges are to be calculated to reflect the amount estimated as being

necessary to meet those charges on an annual basis, there is no argument that the company would have run at a profit over the period of ten years, or had there been a profit that it would have been in the amount now needed to meet the likely costs.

44. In that context, I consider it to be credibly shown by Paul Jacobs in his affidavit that it is "inconceivable that there could have been a surplus" in those years, or at least any surplus sufficient to meet the application for costs.

45. I note further that there is no plea in the statement of claim that the monies collected over the period of the occupational lease were misapplied.

46. Similarly it is arguable that prior to the enactment of the Multi-Unit Developments Act 2011, there was no obligation on the part of an owners management company to make provision for a sinking fund, and there is no evidence before me that would suggest that a sinking fund has been put in place even now, some years after the management company has taken over the *de facto* day-to-day control of the common areas and has commenced the collection of management charges.

47. The plaintiff also suggests that the estimate of costs is grossly overstated, but as it has not adduced any expert evidence as to the likely costs, the proposition advanced in the affidavit of Ms O'Sullivan is a mere assertion, and does not assist me in understanding the extent to which the plaintiff may be unable to meet those costs, if the result of the litigation so requires.

48. Finally, it is argued by these defendants that I ought not to take any account of the evidence contained in the two replying affidavits of Richard Trehy sworn on 12th and 28th April, 2016. Mr. Trehy is an accountant and a director of the management company since 2011, and owns or has owned one unit. While it might be argued that Mr. Trehy's evidence is not to be considered as that of an independent witness, I do not believe that is sufficient for me to discount it entirely, although his personal interest in the litigation might go to the weight that I would give to his evidence. However his evidence is not sufficient to persuade me that the clear impecuniosity of the plaintiff company is attributable, at least to any significant degree, to the acts or omissions complained of in respect of which the proceedings against these defendants are brought.

Delay

49. An argument is made by the plaintiff that these defendants have delayed in bringing this motion, and that this delay is sufficient to enable me to exercise my discretion to refuse the order. That an order for security of costs may be refused on the discretion of the court where there has been delay is clear from a number of judgments as explained by Charleton J. in *Oltech (Systems) v. Olivetti U.K. Limited* where he said:

> *"Any court considering this alleged special factor would need to analyse the nature of the delay in the light of the means of knowledge of the moving party, as to what that party knew or ought reasonably to have known, and assess its impact on the course of the case in order to decide whether the order should be refused. The reason for the delay may be important. Delay as a reason for refusing to make the order can be very important where the plaintiff company has acted to its detriment in incurring a level of costs that it would not have incurred had it known it would have been required to provide security;"*

This approach was considered recently by Barrett J. in *Euro Safety and Training Services Limited v. An Foras Áiseanna Saothair* [2016] IEHC 161, and by Hogan J. giving the judgment of the Court of Appeal in *Pagnell Ltd (t/a Snap Printing) v. O.C.E Ireland Ltd.*.

50. Dunne J. in *Ferrotec Limited v. Myles Bramwell Executive Services Limited t/a Slimming World* [2009] IEHC 46 dealt with the question of delay and considered that the fact that no significant costs were incurred in the period of the alleged delay was an element for which she had regard. She posed the test of whether the delay "*has had any impact on the plaintiff's position*", and I consider that this points me to the correct approach in the present case

51. The relevant motion in this case issued on 16th February, 2016. By letter of 29th January, 2016 the solicitors for these defendants wrote to the plaintiff company and called upon it to provide security for the costs of defending the proceedings. That letter was replied to on 29th January, 2016. The motion was brought promptly thereafter.

52. The plaintiff has not shown that during the period between the request for security for costs and the bringing of the motion on 29th February, 2016 that it incurred any litigation costs in respect of these defendants, or incurred costs that would not otherwise have been incurred, and I am not persuaded that there is any prejudicial delay such that would entitle the plaintiff to argue that I ought in my discretion to refuse the application.

53. The plaintiff company in its letter of 29th January, 2016 argues that this application for security for costs was premature, but seeks equally to assert the contrary position, namely that these defendants have delayed too long in bringing this motion. The plaintiff has not however been in a position to show on affidavit or by argument before me that any matter of substance has occurred between the request that security be provided and the bringing of the motion.

54. Further I am not persuaded that these defendants can be said to have delayed in regard to the course of the litigation to date. The plenary summons issued on 14th August, 2014 and the statement of claim was delivered on 9th April, 2015. A letter seeking particulars was raised by these defendants on 22nd May, 2015 and replies delivered thereto on 1st July, 2015. The statement of claim was amended by order on 29th February, 2016 to reflect the change of name of the plaintiff. A defence was served on 27th May, 2016 and a reply thereto delivered on 28th June, 2016. As I have indicated above, I do not propose dealing with this motion on the basis of some of the pleas contained in the defence served by these defendants on 22nd May, 2016 as those matters were not expressly flagged in the motion seeking security for costs.

55. The plaintiff has not shown that any act or any additional expenditure has been incurred by it as a result of any delay between the service of the statement of claim in April, 2016 and the letter served on 29th January, 2016 by which security was sought. Furthermore, it seems to me to have been reasonable for the solicitors for these defendants not to have engaged the question of security for costs at all until there was a reply to its notice for particulars which occurred on 1st July, 2015.

56. I do not consider that delay is a factor which might engage my discretion to refuse relief in this case.

Conclusion

57. I am not satisfied that the plaintiff has shown special circumstances that engage my discretion to refuse the relief sought, and I propose making an order that the plaintiff do provide security for the costs of the eighth and ninth defendants in these proceedings in such amount and by such means as are to be determined following further submissions by counsel.