

THE HIGH COURT**COMMERCIAL****2014/4546P****2014/68COM****BETWEEN****GLOBE ENTERTAINMENTS LTD & SEAN DOYLE****PLAINTIFFS****AND****THE PUB POOL LTD (IN RECEIVERSHIP), TOM KAVANAGH & ULSTER BANK IRELAND LIMITED****DEFENDANTS****JUDGMENT of Ms. Justice Costello delivered the 24th day of February 2015**

1. This is an application for specific performance of an alleged contract for the sale of premises known as The Globe and Rí-Rá nightclub, 11 South Great George's Street, Dublin 2 ("the Premises") and of an alleged agreement to compromise the personal liabilities of the second named plaintiff to the third named defendant for the sum of €5,000 together with various other ancillary reliefs.

Background

2. The Pub Pool Ltd., the first named defendant, purchased the Premises on 27th August, 2007, with the benefit of monies advanced by Ulster Bank Ireland Ltd., the third named defendant ("Ulster Bank"). The first named defendant mortgaged the Premises to Ulster Bank by a deed of mortgage dated 27th August, 2007. The title to the Premises is both freehold and leasehold. The leasehold interest is held under an indentured lease dated 21st December, 1995, made between Exchequer Investments Ltd. of the one part and Sherland Entertainments Ltd. of the other part for a term 35 years from 15th December, 1995 ("the Sublease"). The landlord's interest in the Sublease is held by Mr. Gerard Conlon.

3. The first named defendant was in default of its repayment obligations and by a deed of appointment dated 27th March, 2009, Ulster Bank appointed Mr. Tom Kavanagh of Kavanagh Fennell, the second named defendant a receiver and manager over the premises ("the Receiver").

4. The Premises were placed on the market by the Receiver in April/May, 2009 with CBRE as selling agents. It immediately became apparent that there were two major obstacles to selling the premises. Firstly, there was a general difficulty of obtaining funding in the prevailing economic circumstances. Secondly, there was the difficulty of obtaining the consent of the landlord, Mr. Conlon, to the assignment of the leasehold interest in the Sublease to any purchaser.

5. The second named plaintiff ("Mr. Doyle") has worked in the pub business all of his adult life. He bought his first pub at the age of 24 and he has bought many pubs since then. He was a 40% shareholder in the Thomas Read Group which was formerly involved in running many large and successful pubs throughout Dublin. At all material times Mr. Doyle was interested in acquiring the Premises once they were put up for sale in 2009. In addition to the difficulties of acquiring funding and acquiring the consent of Mr. Conlon to the assignment of the Sublease, Mr. Doyle had the added problem that he had very significant personal bank liabilities which required to be resolved before he could complete any purchase. In particular there was evidence that he owed Ulster Bank approximately €1 million in his personal capacity and he owed approximately €2 million on foot of a personal guarantee. There was evidence that he owed Bank of Scotland (Ireland) Ltd. approximately €72 million.

6. Mr. Doyle proposed to borrow funds from Ulster Bank for the purpose of both purchasing the Premises and resolving his personal liabilities to Ulster Bank. In 2009 Ulster Bank was prepared to follow this strategy. In June, 2009 Mr. Doyle offered to purchase the Premises for €5.6 million. This was considerably in excess of all other expressions of interest. The offer was accepted by the Receiver. Between June and December, 2009 the Receiver's solicitors sought the consent of Mr. Conlon to the assignment of the Sublease to Mr. Doyle.

7. Mr. Doyle and Ulster Bank reached an agreement in relation to the purchase of the Premises and a resolution of his liabilities to Ulster Bank. The Bank issued a facility letter dated 1st December, 2009, whereby it agreed to advance Mr. Doyle the sum of €5.240 million to finance the acquisition of the Premises and to provide for the settlement of his obligations under his personal guarantee. A further €1 million was to be made available to re-finance his existing personal liability. On 4th December, 2009, the first named defendant, acting by its receiver, the Receiver, agreed to sell the Premises to Mr. Doyle in trust for the first named plaintiff. Completion of the sale was conditional upon the Receiver obtaining the prior written consent of the landlord to the assignment of the Sublease.

8. Pending completion of the sale and while the Receiver was obtaining the landlord's consent to the assignment of the Sublease, Mr. Doyle was very anxious to go into possession of the Premises. The Receiver and Mr. Doyle entered into an agency agreement whereby the Receiver employed Mr. Doyle's company to run the business. The Receiver remained the licence holder of the Premises.

9. In the event there were significant difficulties in obtaining any consent from Mr. Conlon. Initially Mr. Conlon had sought to forfeit the Sublease, but this position was not pursued. He then served a schedule of dilapidations in relation to the property. The dilapidations had to be dealt with. Throughout 2010 and 2011 Mr. Conlon refused to grant his consent to the proposed assignment of the Sublease to Mr. Doyle or one of his companies. Ultimately the Receiver issued proceedings on behalf of the first named defendant in the High Court seeking a declaration that Mr. Conlon's consent to the proposed assignment was being unreasonably held.

10. Mr. Doyle's personal finances reached a crisis in May, 2010 when a number of his public houses were placed into receivership by Bank of Scotland (Ireland) Ltd. The practical effect of this development was that Mr. Doyle's ability to raise funding and the Receiver's ability to obtain the landlord's consent became very difficult. It meant that there was no realistic prospect of completing the 2009 contract. Throughout 2012 Mr. Doyle sought to renegotiate the facilities he had agreed with Ulster Bank in 2009 as the facility letter of 1st December, 2009, had lapsed in January, 2010. By an email dated 10th August, 2012, Mr. Robert Foster of Ulster

Bank informed Mr. Doyle, copying the email to Mr. John Dolan, Mr. Doyle's accountant, that the Bank had declined the request for funding to purchase the Premises from the Receiver and informed him that the Bank wanted to realise value for its security now. He indicated that he would inform the Receiver.

11. The Receiver instructed CBRE to market the Premises again. Interested parties were contacted directly and the property was advertised for sale in the national press. Mr. John Hughes of CBRE wrote to Mr. Doyle on 1st October, 2012, informing him that he was selling the Premises on the instructions of the Receiver. Mr. Doyle was informed that CBRE were inviting all interested parties to submit their best unconditional final offer for the premises in writing by 12th October, 2012. It was stated that the formal offer should include the amount offered together with proof of funding:-

"The proof of funding should be in the form of a bank statement, unconditional letter of offer from a lending institution relating to the purchase of the property or a statement of affairs certified by a suitably qualified auditor. The Vendor reserves the right to seek such additional financial information as may be required to be satisfied that the bidders' financial standing is sufficient to complete the purchase of the property".

12. Due to his personal circumstances, Mr. Doyle did not make a bid in response to this letter. He did not raise any objection to the Receiver seeking to readvertise the Premises for sale notwithstanding the fact that his 2009 contract with the Receiver had not been terminated.

13. CBRE received over a hundred expressions of interest and approximately 20 viewings of the Premises took place during the course of September and October, 2012. Mr. Doyle was aware of these developments and made no objection to the efforts by the Receiver to sell the property in autumn 2012.

14. As a result of this exercise two interested parties emerged; Panther BIL Ltd. and Mr. Paul Keavney. An offer was accepted from Mr. Keavney purchasing through his company Bolway Investments Ltd. in the sum of €2.35 million and contracts were issued to his solicitors. There was a difficulty in obtaining Mr. Conlon's consent to the assignment of the Sublease to Mr. Keavney or his company. In June, 2013 the Receiver's solicitors received a letter from Mr. Conlon's solicitors consenting to the assignment of the Sublease to Panther BIL Ltd. The principal of Panther BIL Ltd. is Mr. Greg Kavanagh. The Receiver had certain talks with Panther BIL Ltd. but ultimately the matter did not go any further with either Mr. Keavney or Panther BIL Ltd. The contracts issued to Mr. Keavney were not executed.

15. In early September, 2013 a new potential purchaser emerged, Mr. Thor O'Brien. He operated a bar in The Central Hotel which was immediately adjacent to the Premises. The owner of The Central Hotel was Mr. Conlon. Mr. Conlon told the Receiver that he would consent to an assignment of the Sublease to Mr. O'Brien. Mr. O'Brien made an offer to purchase the Premises towards the end of November, 2013 for €2.3 million. The contracts which had been sent out to Mr. Keavney were taken back and Mr. O'Brien's offer was accepted and contracts were sent out to him towards the end of November, 2013. However, Mr. O'Brien did not sign the contract but sought to reduce his offer from €2.3 million to €1.8 million and then €1.9 million.

16. Throughout 2013 Mr. Doyle had been negotiating to resolve his liabilities with Bank of Scotland (Ireland) Ltd. Ultimately in early December, 2013 he refinanced his liabilities with Bank of Scotland (Ireland) Ltd. and an investment fund called Apollo who had purchased his loans. He refinanced his liabilities with facilities from Bank of Ireland and Allied Irish Bank. Mr. Doyle remained eager to purchase the Premises if at all possible. In August, 2013 Mr. Doyle approached Mr. Roche of Ulster Bank seeking to raise finance from Ulster Bank to allow him to purchase the Premises and to resolve his personal liabilities with that bank.

Negotiations to purchase the Premises and resolve personal liabilities to Ulster Bank

17. Mr. Doyle wished to proceed with a further proposal to purchase the Premises. At a meeting with Mr. Roche on 5th September, 2013, Mr. Roche discussed the repayment of Mr. Doyle's personal debt and the personal guarantee liabilities together with the possibility of financing the purchase by Mr. Doyle of the Premises. Mr. Roche advised him to look for alternative sources of funding for the purchase of the Premises. On 6th December, 2013, following the completion of his deal with Bank of Scotland (Ireland) Ltd., Mr. Doyle contacted Mr. Roche seeking a meeting. Mr. Roche and Ms. Jenny Byrne of Ulster Bank met with Mr. Doyle on 12th December, 2013. Mr. Doyle stated that he had some alternative sources of funding for the project and he discussed paying €2.5 million for the Premises. He said he had no funds to deal with his personal liabilities at that time.

18. Mr. Roche contacted the Receiver and suggested that a three way meeting be organised between Ulster Bank, the Receiver and Mr. Doyle in January, 2014. A meeting was arranged by the Receiver on the 5th February, 2014.

19. In the meantime Mr. Conlon's solicitors wrote to the Receiver indicating that Mr. Doyle and Mr. Conlon had been in direct communication with each other and Mr. Conlon now agreed to the assignment of the Sublease to Mr. Doyle or his nominated company. Despite the fact that the Receiver had issued contracts to Mr. O'Brien he was prepared to explore a possible sale to Mr. Doyle as Mr. O'Brien had reduced his offer and there was no immediate sign of the executed contracts being returned.

20. The meeting of the 5th February, 2014, was on a without prejudice basis. It was chaired by the Receiver. Mr. Tom Kavanagh's evidence was that Mr. Roche advised Mr. Doyle that the Receiver was selling the property and that the reason for Ulster Bank's involvement was to agree the sale price and to deal with his personal liabilities. Mr. Kavanagh stated that if a sale was agreed it would be subject "to legals and proof of funding".

21. Mr. Roche's evidence was as follows:-

"The reason the Bank was involved in discussions with Mr. Doyle was that Mr. Doyle could not do a deal to purchase the Property from the Receiver in isolation from a deal on the Recourse Element with the Bank, as it was highly unlikely that he would be able to get finance from a 3rd party lender without the Recourse Element being resolved..."

"There was no reason for the Receiver to discuss the potential sale of the Property with Mr. Doyle, unless he was able to demonstrate that he was in a position to fund it. To fund it, he was going to have to be able to reach a settlement with the Bank in relation to the Recourse Element, as it was unlikely that a third party lender would get involved unless the legal and financial risks associated with the Recourse Element were closed out."

In relation to the meeting of 5th February, 2014, he stated:-

"It was made clear by me that the Property was being sold by the Receiver and that the Bank was not selling the Property but needed to be involved because of the Recourse Element and to agree the sale price. The sale by the

Receiver would be via the normal sales process and the agreement on the Recourse Element would be subject to a formal debt settlement agreement with the Bank. It was also made clear by the Receiver that the sale would be subject to legal and funding if the proposed deal went ahead, meaning that any preliminary discussions were subject to contract and that any agreement would not be binding until such time as contracts were issued, executed and exchanged."

22. Ms. Byrne attended the meeting and took the notes. It was her evidence that the meeting was on a "without prejudice" basis and that the sale of the property would be via the normal sale process through the Receiver and that the Recourse would have to be dealt with via a formal debt settlement agreement with Ulster Bank. Mr. Doyle did not address these points in his witness statement. In evidence he stated that he did not remember whether or not the meeting was "without prejudice". He accepted that any agreement was subject to him providing proof of funding. I accept the evidence of the Receiver, Mr. Roche and Ms. Byrne in relation to the meeting of 5th February, 2014, in relation to the matters set out above. In particular, any agreement was subject to proof of funding and subject to contract, the Receiver was selling the Premises, not Ulster Bank. Ulster Bank was negotiating the settlement of Mr. Doyle's personal liabilities and agreeing to the release of its charge if it was satisfied with the proposed purchase price.

23. The Receiver asked Mr. Doyle had he funding to do a deal and Mr. Doyle said that talks were under way but that he needed to know the figure for settling his personal exposure with the Bank. He said he could no longer offer €2.5 million and offered the sum of €2.125 million to purchase the Premises together with €100,000 to discharge his personal debts. The Receiver asked him how far away from concluding a deal would he be and Mr. Doyle said it would take a couple of weeks and perhaps longer "as the Banks may need longer to do due diligence". Mr. Doyle was asked to leave the room and the Receiver and Mr. Roche discussed the situation. They agreed that a minimum total figure of €2.4 million would be acceptable, though they did not agree how this was to be split between the purchase price and the settlement of the personal liabilities due to Ulster Bank. When Mr. Doyle returned to the room he was informed that the Receiver and Ulster Bank required an all in sum of €2.4 million with the split to be agreed and Mr. Doyle was to underwrite any trading losses from the Premises until the date of closing. He was to provide a sworn statement of affairs to Ulster Bank and documentation confirming his settlement of his liabilities with Bank of Scotland (Ireland) Ltd. Mr. Doyle was to revert to Ulster Bank with a final offer within a week.

24. Mr. Doyle wrote to Mr. Roche on 12th February, 2014, and copied the Receiver and Mr. Micheál Leydon of Kavanagh Fennell with the letter. He headed it "without prejudice". He reiterated his offer of €2.225 million to purchase the Premises and as a full and final settlement of his personal liabilities to Ulster Bank. He stated that he would require confirmation of same in order to finalise his funding arrangements. Mr. Doyle headed this offer "without prejudice", in my opinion, because the meeting of the 5th February, 2014, had been on a "without prejudice" basis. I believe this despite his evidence that he could not remember this fact. Furthermore, he gave evidence that the use of this phrase meant that "it was subject to a deal". On the balance of probabilities I find that the negotiations on all sides were on a "without prejudice" basis.

25. Mr. Roche and Mr. Doyle spoke on the phone on 14th February, 2014. Mr. Roche's testimony was:-

"...the Bank's minimum position was €2.4m. I advised that the Bank would be prepared to consent to the sale by the Receiver at €2.225m (but subject to an acceptable outcome for the Recourse Element) and I proposed trying to find a compromise figure..."

Mr. Doyle's evidence was that Mr. Roche said that €2.225 million was acceptable for the pub only.

26. There was a delay in Mr. Doyle furnishing the information necessary to deal with the settlement of his personal liabilities to Ulster Bank throughout February and March, 2014. The Receiver and Ulster Bank were concerned at the delay. They had doubts whether or not there was any reality to Mr. Doyle being in a position to obtain the necessary funding to both purchase the Premises and settle his personal liabilities with Ulster Bank, assuming an agreement could be reached in relation to the figures. The contract for the sale of the Premises which had been sent to Mr. Thor O'Brien in November, 2013 still had not yet been signed. Mr. O'Brien had reduced his offer from €2.3 million and was refusing to sign the contract unless the Receiver accepted a figure of €1.9 million. Both the Receiver and Mr. Roche of Ulster Bank were conscious of the fact that they would have to decide whether or not to proceed with the sale to Mr. O'Brien or try to negotiate an agreement with Mr. Doyle. At this point in time Mr. Conlon had indicated that he would consent to the assignment of the Sublease to both Mr. O'Brien and Mr. Doyle so that was no longer a stumbling block. Both the Receiver and Ulster Bank were anxious that Mr. Doyle might not be able to raise finance and wished to see proof of funds from Mr. Doyle before they would agree to the sale of the Premises and the compromise of his personal liabilities to Ulster Bank.

27. By the 24th March, 2014, Mr. Doyle had furnished sufficient information to Mr. Roche to enable him to prepare a settlement proposal paper for consideration by Ulster Bank's debt settlement forum. The proposal was to sell the pub and to settle with Mr. Doyle for a combined value of €2.25 million. In evidence Mr. Roche stated that this was an error and that it should have read €2.225 million. The proposal referred to the fact that Ulster Bank had appointed a Receiver over the Premises and that the Receiver had put the property on the market in 2009. It also referred to the fact that the Receiver needed the landlord's consent to facilitate the sale and it referred to the costs associated with the receivership sale in the context *inter alia* of the proposed settlement offered by Mr. Doyle in writing in his letter of 12th February, 2014. I emphasise these points as it was argued on behalf of the plaintiffs that the debt settlement proposal indicated that Ulster Bank intended to sell the Premises to Mr. Doyle. I reject this argument. Even though the proposal refers to a sale of the Premises it is clear that the Receiver is the party who will carry out the sale. The debt settlement forum approved the proposal on 27th March, 2014.

The alleged agreement

28. On 31st March, 2014, Mr. Doyle and Mr. Roche spoke on the telephone. Mr. Doyle's evidence was as follows:-

*"...[Mr. Roche] said they would accept an all in figure of €2.3m. I accepted this and agreed that I was happy with the figure of €2.3 as I had three funding offers. **The split was agreed at €2.295 for the Globe and €5k for my personal debt write off.** He said he wanted the deal completed by 31st May and I agreed to revert to him the next day with timing details and other details as I felt the timing requested might be a bit tight due to the fact that Easter Holidays was falling in this period. It was my opinion that there would be delays on the Vendors side of the deal due to the Holidays."(emphasis added)*

29. His note of the meeting was slightly different. It read as follows:-

*"Graham said credit control committee came back and they will accept €2.3m all in for Globe, RiRa (sic), settlement of my personal debt and PG. I said I am happy with that and we agreed to go deal (sic). **He asked what split I wanted. I said I would come back but probably €2.295m for pub and €5k for personal debt and PG.** He said they wanted this*

completed by 31 May 2014. I said I will be back to you tomorrow with timing and any other details to go through.”(emphasis added)

30. Mr. Roche’s evidence was that:-

“I advised Mr. Doyle that the Bank had approved the proposal, at a figure of €2.3m, with the split between consideration for the Recourse Element and asset price to be agreed, and that an element of the consideration had to be allocated to the Recourse, and the acquisition price for the asset had to be agreed by the Receiver, and that there was to be a smooth handover process with the Receiver.

As with previous discussions, it was acknowledged that both these telephone discussions were on a “without prejudice” basis. I advised him that the approval was on the basis that the deal close by 31 May 2014, and that the Bank required proof of funding. I wanted pretty tight timelines for the proposed deal, however Mr. Doyle advised that he would need 6 weeks to get funds approved by Bank of Ireland (13 May 2014) and sign contracts, and four weeks to close (10 June 2014).”

He denied that there was any question of delays on the Vendors side raised by Mr. Doyle.

31. There was a second telephone conversation the following day, 1st April, 2014, between Mr. Roche and Mr. Doyle. Mr. Doyle’s testimony was as follows:-

“On the 1st April 2014 I rang Graham Roche to agree the timing for closing the deal. I said end of May would be tight as Easter Break was falling in the middle of the period and I suggested proof of funds and sign contracts in 6 weeks and close the deal 4 weeks after that. It was my intention to close the deal prior to 31st May 2014 but sought the 2 weeks extra in case of unforeseen holdups (sic).”

Mr. Doyle’s note read as follows:-

*“Rang Graham and said further to agreement yesterday on Globe **split to be pub €2.295m and settlement of personal debt and PG to be €5k**. Graham said that’s fine we agreed to go with that split. I said I need 2 letters from him, one for each agreement for our banks, etc. but keep issues separate. He said fine he said he will organise these. We spoke about timeline for closing of sale. I said end of May could be tight as Easter holidays coming up next week and people in banks, etc. will be off. I suggested I have proof of funds within 6 weeks and close 4 weeks after that. He said to confirm agreement and dates in writing to him so he can get ball rolling.”(emphasis added)*

32. Mr. Roche’s notes of the telephone call of 1st April, 2014, read:-

“c €2.3m – provided no messing with Tom [this was a reference to the Receiver].

Timelines → proof of funds and sign contracts 6 wks 13 May.

Easter 4 wks 10 June.

Close by 31st May.

€5k = PGs.

€2.295K = NCO [new company] – Globe Ent’s.

No discounts on mgt fee.”

33. I have already accepted the evidence of the Receiver, Mr. Roche and Ms. Byrne that on 5th February, 2014, it was made clear to Mr. Doyle that the Receiver would be selling the Premises. I do not accept that the evidence outlined above leads to the conclusion that Ulster Bank was to sell the Premises and not the Receiver. Mr. Doyle’s contemporary notes show that the split of €2.295 million and €5,000 was not agreed on 31st March, 2014, though Mr. Doyle gave evidence that this was the case. Mr. Doyle’s evidence in his witness statement and in his contemporaneous notes was that there was no agreement as of 1st April, 2014, that the sale of the Premises would close on 31st May, 2014. On the contrary Mr. Roche looked for it and Mr. Doyle did not agree.

34. Mr. Doyle then instructed his accountant, Mr. Dolan, to write to Mr. Roche. He sent an email to Mr. Roche and the subject was described as “Sean Doyle Revised Globe Offer”. The text of the email was headed “Without Prejudice” and provided as follows:-

“Dear Graham,

Further to our discussions regarding the Globe Purchase we wish to confirm the following:

We revise our offer of €2,300,000 for the purchase of The Globe and Rí-Rá and settlement of all personal liabilities to Ulster Bank split as €2,295,000 for the Globe Purchase and €5,000 in settlement of all personal liabilities of Sean Doyle to Ulster Bank. This is to include full and final settlement of Sean Doyle’s personal unsecured facility no.5000004828 and any other Personal Guarantee Liability due to Ulster Bank.

The above offer is subject to the below.

1. All amounts owing to Sean Doyle Management Services Limited for the management of the Globe for Kavanagh Fennell are paid in full two weeks after closing and no discount to be requested by Kavanagh or Ulster Bank.

2. We require a letter from either Kavanagh Fennell or Ulster stating that the purchase price agreed for The Globe is €2,295,000 with no mention of the personal settlement. We require this immediately in order to progress with organising finance.

3. We require a letter stating that all the personal liabilities of Sean Doyle are settled for €5,000.

4. We require 6 weeks to provide proof of funding and signing of contract from date of receipt of the letter outlined in

No. 2 above. The reason we are requesting 6 weeks is that the Easter Break will undoubtedly cause delays.

5. We require 4 weeks to close after signing of contracts.

6. The purchasing entity will be Globe Entertainments Limited c/o Sean Ogs Hotel Kilmuckridge, Gorey, Co. Wexford. This is subject to change at the request of our funder.

7. The offer is made subject to us getting an assignment of the RiRa (sic) lease from Gerry Conlon. Once we get the letter as outlined in No.2 we will progress with getting the assignment.

8. Solicitor Rory Deane and Company, Solicitors, Temple House, 8 Templeshannon, Enniscorthy, Co. Wexford.

Regards

John Dolan"(emphasis added)

35. This email was not copied to the Receiver so Mr. Roche emailed Mr. Dolan and Mr. Doyle asking:- "[c]an you confirm it is in order to forward your email to the Receiver so he can take forward the sale?" Mr. Doyle replied that that was fine. Mr. Roche responded to Mr. Doyle as follows:-

"Thanks Sean. I spoke with Tom – he'll formally request we consent to the sale at €2,295k later this afternoon, and following receipt of our consent to the sale, he will formally take forward with you."

36. Immediately thereafter Mr. Roche forwarded Mr. Dolan's email to the Receiver and Mr. Micheál Leydon. This was the first indication to the Receiver of the offer by Mr. Doyle to purchase the Premises for the sum of €2.295 million. Mr. Roche's email stated:-

"Please see note from Sean Doyle below regarding the sale."

I note you will send a formal request to the bank this afternoon recommending consent to the sale at €2,295k."

37. Later on 1st April, 2014, the Receiver emailed Mr. Roche in relation to the offer stating:-

"We will get this done early tomorrow, however we need to build in:

– the fact that Sean is responsible for all losses since our negotiations commenced

– closing date is 31.5.14

– we need to bottom out what Sean owes us for profit share and what we owe him for other matters and get some wording around that".

The following morning Mr. Roche replied to this email:-

"No problem."

In the interim, do you want to send in a note recommending the sale at €2,295k, subject to clarity on a number of points? That way we can get the ball rolling with the BOI funding request. I can then confirm to SD that the bank has consented to the sale with the contract terms to be agreed between Receiver and SD."

38. On 2nd April, 2014, the Receiver emailed Mr. Roche in relation to the Premises as follows:-

"We are in receipt of an offer from Sean Doyle in the amount of 2.295m for the above asset subject to certain conditions to be agreed between the parties. We recommend acceptance of this offer."

Please revert with approval for same."

Regards,

Tom."

Mr. Roche responded that afternoon:-

"Hi Tom

I refer to your email below and recent discussion and formally confirm that the bank has consented to the sale at €2.295m subject to a close by 31.05.14. Regards

Graham."

39. Mr. Leydon wrote to Mr. Roche on behalf of the Receiver enclosing a letter dealing with additional matters later that evening. It was headed "Re: The Pub Pool Limited (In Receivership)". It provided inter alia:-

"Further to recent meetings and correspondence, subject to the matters below, I have recommended the sale of the Globe freehold premises and the assignment of the Rí Rá leasehold premises to Globe Entertainments Limited for a sum of €2,295,000 on foot of the offer from Sean Doyle."

It went on to say that Mr. Doyle had given a non specific date for closing and said that it should be 31st May, 2014, "and I will agree this with Mr. Doyle."

40. Mr. Roche replied to Mr. Leydon on 3rd April, 2014, thanking him for the letter and noting the contents of same:-

"We will drop Sean a one liner confirming consent so he can move ahead with BOI and I will cc you with same.

Can you liaise with Sean then to take the deal forward?"

Mr. Leydon replied to Mr. Roche as follows:-

"We'll do that.

Can I break news to Thor?

[The Receiver's solicitor] is going to have to retrieve the contract already issued to Thor's solicitor before engaging with Rory Deane for Sean."

To which Mr. Roche responded:-

"Should we hold off on this until we get proof of funds from SD? I told him we wouldn't (sic) get contracts out to him until we evidenced this.

That way we have a Plan B if he can't (sic) get the funding. Realistically that's (sic) going to take up to 4 weeks, so I'm not sure how that will pan out.

What do you think?"

41. On 3rd April, 2014, in compliance with the request from Mr. Doyle, Mr. Roche wrote a letter to Mr. Doyle in relation to the transaction as follows:-

"Re: Sale of "The Globe/ RíRá"

Dear Sean,

Following receipt of a recommendation from the Receiver, I confirm that Ulster Bank Ireland Limited has consented to the proposed sale of the Globe/ RíRá to Globe Entertainments Limited for €2,295,000 subject to the sale closing by 31st May 2014.

I trust you find the above in order and should you have any further queries please contact jenny.byrne@ulsterbankcm.com.

Yours sincerely

Graham Roche

Director RCRI

cc Tom Kavanagh, Receiver and Manager, The Pub Pool Ltd".

Ms. Byrne emailed the letter to Mr. Doyle at 11:30 a.m. on 3rd April, 2014, and he responded later that day:-

"Jenny/Graham

Thanks for that, can you also fwd other letter confirming the €5k.

Regards

Sean Doyle".

42. The plaintiffs' case is that there was a binding enforceable contract for the sale of the Premises by both Ulster Bank and the Receiver to the first named plaintiff and a compromise of the personal liabilities of Mr. Doyle to Ulster Bank from this point onwards. It is said there was a concluded agreement and the emails and letters quoted above together constitute a note or memorandum of the agreement signed by the Vendor or the Vendor's authorised agent.

Subsequent Development

43. On 9th April, 2014, Mr. Greg Kavanagh contacted the Receiver and indicated that he was willing to purchase the Premises via his company Panther BIL Ltd. Mr. Kavanagh had previously expressed interest in the Premises during the October, 2012 sales process and again in June, 2013. In fact Mr. Conlon's solicitors had furnished a consent to an assignment to Panther BIL Ltd. by letter dated 12th June, 2013. This development was a complete surprise to all concerned. From the point of view of the Receiver, he had a contract out with Mr. Thor O'Brien but he seemed most unlikely to close the sale as his reduction in the price offered had not been accepted by the Receiver. Negotiations with Mr. Doyle were at an advanced stage, though proof of funding was still required and there were other matters to be agreed. Now Mr. Greg Kavanagh had indicated that he was willing to pay €2.1 million with a deposit of €400,000. Further he advised that he was willing to proceed without the consent to the assignment of the Sublease by Mr. Conlon (though he did have the benefit of the consent from the 12th June, 2013). The Receiver was conscious of his duty to obtain the best price for the Premises and therefore felt he had a duty to explore this latest approach. He consulted with Mr. Roche to discuss the position. They explored the various options open to them. The Receiver took legal advice. The Receiver had a number of phonecalls with Mr. Greg Kavanagh and Mr. Kavanagh increased his offer to €2.7 million. Mr. Leydon emailed Mr. Roche on 11th April, 2014, to confirm the present position in relation to the Kavanagh offer on the Premises, he stated:-

"We have agreed with Kavanagh that subject to contract he will pay the sum of €2.7m and he has to sign the contract by close of business on Monday 14th April 2014 with a 28 day closing period.

He is to pay a €400,000 non refundable deposit on the signing of the contract. You might confirm that you are agreeable to the above."

44. Mr. Leydon also confirmed that he had notified Mr. O'Brien that they would not be proceeding with him and had requested the Receiver's solicitors contract Mr. Greg Kavanagh's solicitors. Mr. Roche responded later that morning stating that this represented what had been discussed and agreed. On 16th April, 2014, Mr. Greg Kavanagh signed the contract for the purchase of the Premises for the sum of €2.7 million and paid a deposit of €400,000. The closing date for the sale was 17th May, 2014.

45. Before the Receiver signed the contract on 17th April, 2014, he emailed his solicitor as follows:-

"A thought struck me overnight

I'm concerned that if I sign the contract today with Greg kavanagh without giving sean doyle one last bid that this may jeopardise the banks ability to chase sean on the PG

I have a feeling the bank may prefer to close the deal with Greg regardless of this but I would like the bank to be aware of any consequences

Pl[ease] advise and note Graham is away but Jenny is cc'd above

Jenny- once [the Receiver's solicitor] advises I would be obliged to receive instructions before I sign up

Tom".

The Receiver emailed Ms. Byrne saying that he intended to sign the contract later that day and he was putting the Bank on notice of the issues outlined in a letter from his solicitors regarding the risks relating to pursuing Mr. Doyle on his guarantee. Ms. Byrne replied thanking him for the letter of advices and noting the risks to the Bank and asking that she be kept apprised of the events as they unfolded. Later that day the Receiver executed the contract for the sale of the Premises to Panther BIL Ltd.

46. On 23rd April, 2014, the Receiver made contact with Mr. Doyle and informed Mr. Doyle of the sale of the Premises to a third party. Mr. Doyle's evidence was:-

"Tom informed me that he knew we had a deal on the Globe but that the bank had received an unsolicited offer from someone else at a much higher figure. He said the bank looked like they were going to accept it. I informed him that they couldn't as we had a deal done and that Jerry Conlon would not give his consent to anyone else so the other proposal will go nowhere."

47. The Receiver disputed Mr. Doyle's account of the telephone call. In particular he denied that he admitted to Mr. Doyle that "we had a deal on the Globe". I accept the evidence of the Receiver in relation to the content of this telephone call. I believe it is highly unlikely that the Receiver would have stated that the Bank had received an unsolicited offer from someone else when it was he who had received the offer. In circumstances where he had received legal advice and had to consider carefully whether or not there existed a binding agreement between himself and Mr. Doyle before he could proceed with the offer from Mr. Kavanagh, I think it extremely unlikely that he would have informed Mr. Doyle that he, Mr. Doyle, had a deal on The Globe. It is also improbable that he would have said that it looked like the Bank were going to accept the unsolicited offer in circumstances where he had signed the contract a week earlier. I reject the suggestion that the Receiver acknowledged that he had entered into a binding contract with Mr. Doyle during this telephone call.

48. Mr. Doyle went on holidays and subsequently on 13th May, 2014, there was a meeting between Mr. Doyle, Mr. Leydon and the Receiver. The Receiver confirmed that he was proceeding with a sale to a third party and terminated the agency agreement with the first named plaintiff. Mr. Doyle indicated that he was going to institute these proceedings and register a *lis pendens*. Ultimately Mr. Doyle instituted the proceedings and sought an injunction to restrain the defendants from selling the Premises to a third party.

The issues

49. The first named plaintiff seeks orders of specific performance of an agreement for the sale of the Premises. It follows that the first named plaintiff must prove on the balance of probabilities that it entered into an agreement for the purchase of the Premises. Somewhat extraordinarily the reliefs sought do not specify against whom the order for specific performance is sought. Both in the opening of the case and at the closing submissions, counsel for the plaintiffs did not clarify whether they sought an order for specific performance as against Ulster Bank or as against the Receiver. The second named plaintiff seeks specific performance of the agreement to compromise his personal liabilities for the sum of €5,000 with Ulster Bank.

The Vendor

50. Who was the Vendor of the Premises in the contract asserted by the plaintiffs? The title was held by the first named defendant which was in receivership. It follows that the Vendor could only be either the Receiver as receiver of the Premises or Ulster Bank as mortgagee. It cannot be both. The unanimous evidence of all witnesses for the defendants was that at all times it was the Receiver who was selling the Premises.

51. The uncontraverted evidence was that the Receiver had been trying to sell the Premises since 2009. He had signed a contract for the sale of the Premises with Mr. Doyle in December, 2009. He had entered into an agency agreement with Mr. Doyle at the same time. He was the holder of the licence to the Premises. He instituted proceedings against Mr. Conlon seeking a declaration that Mr. Conlon had unreasonably withheld his consent to the assignment of the Sublease to Mr. Doyle or one of his nominated companies. In autumn 2012 he remarketed the Premises in the national press. His selling agent, CBRE wrote to Mr. Doyle on 1st October, 2012, informing him that the Receiver was seeking to sell the Premises. He issued contracts to Mr. Keavney and Mr. O'Brien in 2012 and 2013 and to Mr. Greg Kavanagh's company, Panther BIL Ltd. in April, 2014.

52. The evidence establishes the fact that at no stage did Ulster Bank ever intend to sell the Premises and that it was always the intention of both Ulster Bank and the Receiver that the Receiver would be the vendor of the Premises. The involvement of Ulster Bank in the negotiations with Mr. Doyle was solely for the purpose of resolving his personal liabilities to Ulster Bank and ensuring that Ulster Bank was satisfied at the proposed purchase price for the Premises so that it would consent to the release of its charge.

53. A fundamental difficulty in this case was the failure of Mr. Doyle to appreciate or accept the distinct roles of the Receiver and Ulster Bank in the ensuing transaction. This was not a simple sale by the Receiver of a charged asset to a purchaser. The proposed purchaser was personally indebted to the mortgagee Bank. In order that the transaction could proceed, Ulster Bank had to agree a settlement in relation to the personal liabilities of Mr. Doyle to the Bank and it had to be satisfied at the price at which the Receiver was proposing to sell the charged asset if it were to consent to the release of the charge. The sale could not proceed if the charge

was not released at the closing of the sale. The purchase price was insufficient to discharge the sums due to Ulster Bank by the first named defendant so the consent of Ulster Bank to release its charge was necessary.

54. I am completely unable to accept any suggestion that Mr. Doyle was not fully aware of the distinction between Ulster Bank and the Receiver in this case. I do not accept that he can have believed that Ulster Bank was selling the Premises. I find his testimony to the effect that either Mr. Roche was acting for the Receiver or the Receiver was acting for Ulster Bank to be completely incredible. Mr. Doyle undoubtedly was aware of the significance of the person who holds the licence to a licenced premise. He also had considerable personal experience of receivers as in 2010 Bank of Scotland (Ireland) Ltd. appointed receivers to a number of his properties. I do not accept that a person of Mr. Doyle's experience would not be aware of the fundamental importance of the identity of the Vendor of property. I am forced to conclude that Mr. Doyle in fact must have known that it was always the intention of both Ulster Bank and the Receiver that the Receiver and the Receiver alone was to sell the Premises. Further, there was no credible evidence adduced to suggest why Ulster Bank should sell the Premises to Mr. Doyle but that all other possible contracts for the sale of the Premises to any other parties were to be with the Receiver. I hold as a fact that, at all material times, the Vendor of the Premises was the Receiver.

Was there a calculated agreement

55. The first question to be considered is whether or not there was an agreement for the sale of the Premises. The plaintiffs' case is that the purchaser was the first named plaintiff, the purchase price was €2.295 million, the Premises was that set out in the 2009 contract and was subject to the first named plaintiff providing proof of funds. Mr. Doyle's evidence was that he thought Ulster Bank was selling the Premises in 2014 because the Bank had appointed the Receiver and the Bank "called the shots". He said that he made an enforceable agreement with Mr. Roche. He said Mr. Roche was negotiating on behalf of either the Bank or the Bank and the Receiver he said he did not care whether the contract was with the Bank or the Receiver. He said he did not remember it being stated at the meeting of 5th February, 2014, that the Receiver was selling the property and he gave evidence that Mr. Roche did not state that. In his witness statement Mr. Doyle stated that as far as he was concerned his offer of 1st April, 2014, had been fully accepted by both Ulster Bank and the Receiver. On the one hand his evidence implied that the Receiver was the agent of Ulster Bank and on the other hand he suggested that Mr. Roche of Ulster Bank was negotiating on behalf of Ulster Bank and the Receiver and implied that Ulster Bank might be the agent of the Receiver. I am quite unable to ascertain who the plaintiffs claim was the Vendor in the contracts in respect of which they seek specific performance. On that basis alone the action must be dismissed.

56. If I accept that the plaintiffs' case is that the Vendor was Ulster Bank, in my judgment, there is no evidence to establish that Ulster Bank ever intended to act as Vendor of the Premises. Ulster Bank had appointed a Receiver in 2009 and had always acted on the basis that the Receiver was to be the Vendor of the Premises. The Receiver entered into the contract for sale of the Premises with Mr. Doyle in 2009. The Receiver marketed the Premises for sale in 2009 and in 2012. The Receiver issued contracts to Mr. Keavney, Mr. Thor O'Brien and ultimately to Mr. Greg Kavanagh's company, Panther BIL Ltd. The emails between Mr. Roche and the Receiver and Mr. Leydon between the 1st and 3rd April, 2014, are certainly consistent with the position that the Vendor was to be the Receiver and that Ulster Bank was consenting to the proposed sale. It follows therefore that there cannot have been any concluded agreement between the first named plaintiff and Ulster Bank for the sale of the Premises. Therefore any enforceable agreement must be between the first named plaintiff and the Receiver. On the plaintiffs' evidence no such agreement with the Receiver has been established.

Section 51 of the Land and Conveyancing Law Reform Act 2009

57. Section 51 of the Land and Conveyancing Law Reform Act 2009 replaces s. 2 of the Statute of Frauds (Ireland) Act 1695. It provides as follows:-

"(1) Subject to subsection (2), no action shall be brought to enforce any contract for the sale or other disposition of land unless the agreement on which such action is brought, or some memorandum or note of it, is in writing and signed by the person against whom the action is brought or that person's authorised agent."

The first named plaintiff's case is that it entered into a contract for the sale of lands with both Ulster Bank and the Receiver. It cannot have entered into a contract for the sale of the Premises with both Ulster Bank and the Receiver. Certainly, it would not be possible to obtain an order for specific performance against each of them as, by definition, only one of these defendants could comply with the order, if made, and therefore the other would be prevented from complying with the order. If the first named plaintiff's case is that the contract for the sale of the Premises is with the Receiver then there must be a note or memorandum signed by the Receiver (or his authorised agent) evidencing the contract. The plaintiffs argue that the chain of emails, as set out at paras. 34-41 above, constitute a note of memorandum satisfying the requirements of s. 51 of the Act of 2009.

58. The Receiver's last document is his email of 2nd April, 2014, and it is addressed to Ulster Bank, not Mr. Doyle or Mr. Dolan. It recommends acceptance of an offer subject to certain conditions which have yet to be agreed between the parties. The letter of 2nd April, 2014, in the name of the Receiver emailed by Mr. Leydon to Mr. Roche refers to the Receiver recommending the sale of the Premises on foot of the offer received from Mr. Doyle. It expressly states that there are a number of areas to be finalised. It is clear from the terms of the letter that the closing date has not yet been agreed with Mr. Doyle. There is no subsequent document from the Receiver in the chain relied upon by the first named plaintiff.

59. Buckley, Conroy and O'Neill in *Specific Performance in Ireland* (First Edition, 2012) state at para. 3.13:-

"The memorandum may be a single document or a chain of documents or correspondence. Where there is a chain of documents, the court will typically look for a signed document(s) and only incorporate into the chain documents referenced in it. It has been said the signed document must be the last in time, 'for it would be absurd to hold that a person who signed a document could be regarded as having signed another document which was not in existence when he signed the first.' The evidence may be relatively informal: a cheque, or a note in an auctioneer's sale book, or a record in a solicitor's book of instructions may suffice."

The Receiver did not sign a document that acknowledges the existence of a concluded agreement. The last document signed by the Receiver, or on his behalf by Mr. Leydon, recommends acceptance of an offer subject to conditions. A recommendation to sell does not evidence an agreement to sell.

60. An essential condition in a binding contract for the sale of land is the closing date. The Receiver suggested 31st May, 2014, as the closing date. The plaintiffs argue that the closing date of 31st May, 2014, was accepted by Mr. Doyle in the email of 3rd April, 2014, to Ms. Byrne and Mr. Roche. Of course this email is not addressed to the Receiver and it is not signed by him. Furthermore, there was no evidence that Mr. Doyle accepted this closing date. In argument, counsel for the plaintiffs said that the email in reply of 3rd April, 2014, "[t]hanks for that, can you also fwd (sic) other letter confirming the €5k" amounted to an acceptance of this closing

date. On the face of it, I could not construe this email as accepting this closing date. There was no evidence from Mr. Doyle or Mr. Dolan on his behalf ever confirming the acceptance of the closing date of 31st May, 2014. It follows therefore that there was no agreement on one of the essential conditions for a contract for the sale of land to come into being. That being so, there is no evidence of a note or memorandum, whether a chain of emails or otherwise, the last of which was signed by the person charges or his authorised agent, evidencing a concluded agreement to satisfy the statute. On that basis this action must fail.

Agency

61. The Receiver is the agent of the first named defendant pursuant to clause 11.3 of the Deed of Mortgage. This provides:-

"A Receiver so appointed shall at all times and for all purposes be the agent of the Borrower and the Borrower shall be solely responsible for his acts default and remuneration."

This was not contested by the plaintiffs. However, in the course of evidence it was said that Mr. Roche was negotiating on behalf of Ulster Bank and the Receiver. This suggested that an argument was being advanced that Mr. Roche was the agent of the Receiver. Mr. Doyle said that he reached agreement with Mr. Roche and he relied on the letter of 3rd April, 2014, as evidence of that agreement. It was not an agreement with the Receiver.

62. Any agreement reached between Mr. Doyle and Mr. Roche could not bind the Receiver unless Mr. Roche was the agent of the Receiver. There is no evidence whatsoever to establish the fact that Mr. Roche was the agent of the Receiver. This was never put to either Mr. Roche or the Receiver. He was certainly not his authorised agent as required by s.51 of the Act of 2009. I find as a fact that Mr. Roche was not the agent of the Receiver. Therefore he did not conclude an agreement on behalf of the Receiver. On that basis, there was clearly no agreement reached between Mr. Doyle and the Receiver based upon the discussions and emails with Mr. Roche. Mr. Doyle's offer of 1st April, 2014, as expressed in Mr. Dolan's email was forwarded to the Receiver. He recommended acceptance of that offer and the Bank confirmed that it had consented to the sale at €2.295 million subject to a close by 31st May, 2014. This is the height of the plaintiffs' case that there was a concluded agreement with the Receiver. It does not amount to a concluded agreement with the Receiver.

63. The plaintiffs argued that the letter from Ulster Bank signed by Mr. Roche of 3rd April, 2014, was copied to the Receiver and that therefore he was bound by this letter. It was argued that this constituted acceptance of the offer and written proof of the terms of the contract. I cannot accept this. As a matter of logic and fundamental principle the fact that a person is carbon copied with a letter can in no way bind them to the contents of the letter. There is no suggestion that the letter was written for or on behalf of the Receiver. Furthermore, the text of the letter itself indicates that it was an agreement by Ulster Bank to a proposed sale by the Receiver. I hold that there was no concluded agreement for the sale of the Premises by the Receiver to the first named plaintiff.

"Without Prejudice"

64. I accept the evidence on behalf of the defendants that the negotiations from the meeting of 5th February, 2014, onwards were on a "without prejudice" basis. This is entirely consistent with negotiations for the compromise of liabilities owing to Ulster Bank. It is consistent with the fact that Mr. Doyle's letter of 12th February, 2014, and Mr. Dolan's email of 1st April, 2014, are each headed "without prejudice". Mr. Doyle stated that the phrase meant that there was "no deal". Mr. Dolan said that it meant "we were not bound". It seems clear that they each used this phrase to indicate that they intended that no binding enforceable agreement was to come into effect until all matters had been concluded.

65. The offers of Mr. Doyle and of Mr. Dolan on his behalf each envisaged that contracts would be exchanged in the normal way. I therefore conclude that the offer of 1st April, 2014, was in substance subject to the exchange of a formal written contract. There is no requirement in law that the phrase "subject to contract" be employed in order to prevent an enforceable contract coming into effect before formal contracts are executed. I am of the opinion that the use by Mr. Doyle and Mr. Dolan of the phrase "without prejudice" had the effect of preventing an enforceable agreement coming into effect as was their intention, until all matters had been agreed with both Ulster Bank and the Receiver. Both the Receiver and Mr. Roche stated that they did not believe that they could have forced Mr. Doyle or his company to complete the alleged agreement as it then stood. As no formal contracts were executed between the first named plaintiff and any of the defendants for the sale of the Premises, the claim for specific performance must fail on this ground also.

Closing Date

66. One of the essential terms of an enforceable contract for the sale of land is an agreement in respect of the closing date. See *Boyle v. Lee* [1992] 1 I.R. 555. It is clear that both Mr. Roche on behalf of Ulster Bank and the Receiver insisted that the closing date of the proposed transaction was to be the 31st May, 2014. It is equally clear that Mr. Doyle had suggested a longer period. On 1st April, 2014, he suggested six weeks for the proof of funding and the signing of contracts and thereafter four weeks to closing. This would give a closing date of 9th June, 2014, though it was not expressed in those terms. Mr. Dolan's email of 1st April, 2014, offered the same timeline. Mr. Roche's letter of 3rd April, 2014, to Mr. Doyle confirmed that Ulster Bank's consent to the proposed sale was subject to the sale closing by 31st May, 2014. I have already rejected the argument that Mr. Doyle accepted this closing date by his email of 3rd April, 2014. It was not the evidence advanced at the trial. Therefore, on this basis the plaintiffs' case must be rejected also.

Proof of funding

67. It was accepted by the plaintiffs that it was a condition of any agreement for the sale of the Premises that the purchaser provide proof of funding. Considerable evidence was advanced in relation to Mr. Doyle's efforts to obtain funding throughout 2014. Initially he hoped to obtain funds from Bank of Ireland but in early March, 2014 they indicated that they would not be providing funding. He was therefore obliged to look to equity funding for the purchase monies. He explored options with three different funds. He decided that an equity fund known as Bybrook, based in London, offered the best option in the circumstances. In evidence he accepted that as of 1st April, 2014, he did not have a binding enforceable agreement with Bybrook Capital LLP to provide the funds. In his dealings with Mr. Roche and in Mr. Dolan's email of 1st April, 2014, it was indicated that a letter from the Vendor was required in order that he could progress obtaining his proof of funding. This was the sole reason that Ulster Bank produced the letter of the 3rd April, 2014. In fact there was never any evidence adduced that Bybrook Capital LLP required such a letter. In his witness statement Mr. Doyle stated that the letter was required for the purposes of obtaining proof of funds. In oral evidence Mr. Doyle said it was required for this purpose and also as he required proof that he had an agreement. This was not what was said at the time and this was not the basis upon which Ulster Bank provided the letter.

68. Mr. Doyle's negotiations with Bybrook Capital LLP never progressed beyond a heads of agreement. Even the heads of agreement were not completed and were not executed by the parties. On the 7th May, 2014, Mr. Doyle produced a letter dated 1st May, 2014, from Bybrook Capital LLP which stated as follows:-

Confirmation of Finance for The Globe and Rí Rá Nightclub, 11 South Great George's Street, Dublin 2 ('The Globe')

This letter is to inform you that partners of Bybrook Capital LLP have had extensive meetings with Sean Doyle of the Sean Doyle Group in London and Dublin in relation to the financing of the proposed offer for The Globe. As a result we have agreed to make finance available to cover the purchase price of €2,300,000, subject to due diligence.

Bybrook Capital LLP manages the Bybrook Capital Master Fund LP ('the Fund'). We confirm that The Fund has sufficient funds to make this finance available. Please contact us if you have any queries."

69. The plaintiffs' case is that there was an agreement that the plaintiffs were to provide proof of funding within six weeks and the argument is that this letter constituted that proof of funding and they had provided the proof within the six weeks which they say was agreed.

70. I do not accept this argument. In evidence the Receiver stated that he did not accept that this letter (or indeed any of the other documents furnished on discovery) constituted a proof of funding. The proof of funding which the Receiver required was set out in the letter from CBRE to all interested parties in October, 2012 and it clearly required that there be an unconditional signed facility letter or its equivalent. This letter does not amount to such a document. Furthermore, the defendants argued that it was clear that all along no agreement would come into effect until after Mr. Doyle had provided proof of funding. Mr. Doyle's case was that this was a contract subject to the condition that he provide proof of funding. I reject this argument. It is absolutely clear that a receiver and in particular the Receiver in this case would not enter into a binding contract for the sale of the Premises to Mr. Doyle without proof of funds. This had been made clear to Mr. Doyle at the meeting of 5th February, 2014, and there was no credible evidence advanced to establish that this pre condition to the entering into a binding contract had been altered. This was a condition precedent to the formation of a contract, not a condition precedent to performance of the alleged contract. That being so, no proof of funding was ever provided by the plaintiffs. Therefore this is a further ground for holding that the Receiver never entered into a contract with the first named plaintiff.

71. If I am incorrect in this last point, it is still clear that the proof of funds letter of 1st May, 2014, (if it is accepted that this constitutes proof of funds) was not furnished to the Receiver until 7th May, 2014. In the intervening period he had concluded an agreement with Panther BIL Ltd. for the sale of the Premises, as he was free to do, and therefore by the time he was provided with the alleged proof of funds he was neither free nor obliged to enter into a contract with Mr. Doyle or the first named plaintiff.

72. For the reasons outlined above, I dismiss the plaintiffs' claims for specific performance of the sale of the Premises and compromise of the personal debts of Mr. Doyle.