Neutral Citation Number: [2010] IEHC 453

THE HIGH COURT

2004 14273 P

BETWEEN/

TERRY MADIGAN

PLAINTIFF

AND

HARRY REA

DEFENDANT

AND

2004 410 COS

BETWEEN/

TERRY MADIGAN

PETITIONER

AND

HARRY REA AND MONARD (RESEARCH AND DEVELOPMENT) LTD

RESPONDENTS

JUDGMENT of Mr. Justice Roderick Murphy dated 30th day of July, 2010.

1. Outline

In the plenary proceedings, Mr. Madigan, the plaintiff in the matter and petitioner in the second matter, seeks a declaration that he is the legal and beneficial owner of 50% of the shareholding of the second named respondent, Monard (Research & Development) Ltd. (Monard) and remains a director of Monard. Monard owns certain patents in respect of central heating controls. Mr. Rea, the defendant and first named respondent, maintains that he is the legal and beneficial owner of 100% of the shareholding in Monard.

On 8th November, 2004, Ms. Justice Laffoy made a consent order that the related case bearing record no. [2004] No. 410 COS, in which Mr. Madigan was petitioner and Mr. Rea and the company were respondents, be consolidated with plenary proceedings and both would proceed as one action. Noting the defendant's undertaking, the court ordered the defendant:

> Not to interfere with the sole and exclusive right of SystemLink Ltd. (SystemLink) (alleged to be the licensee of Monard) to develop the market for central heating systems and products known as SystemZone (the subject matter of the patents set out in the schedule annexed to the motion) in breach of the agreement between the plaintiff and the defendant dated 22nd March, 2000;
>
> Not to transfer, charge, extinguish or otherwise deal with the shares in Monard Ltd.;
>
> Not to collect or deal with any monies due on foot of royalty agreements in respect of SystemZone products; and
>
> Not to interfere with the payment of patent fees for the upkeep of the patents of the "SystemZone" process by SystemLink.

It was further ordered that points of claim be delivered within three weeks and points of defence within a further three weeks and that discovery of relevant documents be exchanged.

Mr. Justice Clarke had, on 16th July, 2009, noted that the defendant's solicitor ceased to act pursuant to an order of the court, refused the defendant's application to strike out both the plenary proceedings and the petition. This Court also refused a similar application at the commencement of this hearing.

2. The Plaintiff's case as pleaded: points of claim

On 2nd December, 2004 points of claim were delivered.

Having identified the parties and Monard (the company), it was claimed that, by oral agreement made on or about 17th February 1998, Mr. Madigan agreed with Mr. Rea to pay Mr. Rea the sum of £6,100 in exchange for a shareholding in the company. Between February 1998, and January 2001, Mr. Madigan further agreed to fund certain European and U.S. patent applications for certain central heating control products referred to as "SystemZone" in sums totalling £4,537.

Pursuant to the agreement Mr. Rea was to procure the allotment of one half of the shareholding in Monard to Mr. Madigan and both would cooperate in marketing, establishing, and securing further investment for the "SystemZone" systems and products and would share the profits of that process on a 50/50 basis.

It was pleaded that Mr. Rea was in breach of the agreement in that he had either refused to procure the allotment of shares or, in the alternative, the transfer of shares, to the plaintiff and refused to acknowledge same.

By letter dated 29th January 2001, Mr. Madigan sent Mr. Rea, as secretary of the company, a share transfer form which had been executed by Mr. Rea to register the transfer. However, the returns were not filed by Mr. Rea until 20th October, 2001 as the annual accounts of the company were not up to date. Those returns showed Mr. Madigan and Mr. Rea as holders of one share each.

Mr. Rea alleged subsequently that the transfer to Mr. Madigan was in trust for Mr. Rea's son, David Rea, who was then a minor. No evidence was given as to the existence whereabouts or content of Monard's Register of Members.

SystemLink Ltd. (SystemLink) was incorporated by Mr. Madigan's wife, a solicitor, on 2nd March, 2000, initially with equal shares held by Mr. Rea and Mr. Madigan for the purpose of promoting and marketing the SystemZone systems and products as licensee of Monard. SystemLink increased its share capital when three additional investors, Shay Moran, Feargal Fogarty and Peter Courtney, became shareholders after SystemLink had been granted an exclusive agreement with Monard to market the SystemZone process. SystemLink agreed to pay royalties thereon at a rate of 6% per annum. The Industrial Development Authority (now Enterprise Ireland) indicated a willingness to support SystemLink.

Mr. Madigan and Mr. Rea agreed in writing on 22nd March, 2000 that SystemLink would be the sole vehicle through which Monard's patents would be marketed.

Towards the end of 2003, Mr. Rea disagreed with his co-shareholders and with the management of SystemLink and purported to repudiate the agreement which Monard had with SystemLink and the agreement he had with Mr. Madigan.

In particular, Mr. Madigan says that Mr. Rea, at a meeting on 10th December, 2003 at the Rochestown Park Hotel in Cork, purported to deny that Mr. Madigan had any shareholding or interest in Monard. Further by letter dated 16th December 2003, Mr. Rea alleged that Mr. Madigan had only a shareholding in trust for Mr. Rea.

In January 2004, Mr. Rea purported to file a number of returns for Monard to the CRO for the years 2002 to 2004 which showed that Mr. Madigan was neither a director nor a shareholder of the company. Abridged accounts were filed for the year ending 31st October, 2002 accompanied by what purported to be an accountant's report bearing the signature of Mr. Rea as Rea & Associates, Accountants.

In breach of the agreement including that of 22nd March, 2000, Mr. Rea stated that he would no longer allow the SystemZone process to be used by SystemLink. Mr. Rea refused to acknowledge Mr. Madigan's 50% interest in the profits of the SystemZone process as a shareholder in Monard. In the premises the plaintiff pleads that he has suffered loss.

Mr. Rea's affidavit sworn at the interlocutory stage of the proceedings on 3rd November, 2004 stated that Mr. Madigan had a shareholding in trust for Mr. Rea's son. Previously Mr. Rea had stated on 10th December, 2003 that Mr. Madigan was "a company formations type of shareholder".

Mr. Rea then attempted to remove Mr. Madigan as director of Monard in accordance with a purported resolution of the company at a general meeting dated 22nd December, 1998, five years earlier, which provided that Mr. Madigan would retire as a director when Mr. Rea's son reached his 18th birthday, on 9th September, 2002. Mr. Madigan contended that that meeting was not held and that the resolution was a sham.

The minutes read as follows:

> "Minutes of a Meeting of the Board of Directors (of Monard), held at 1, Hollymount, Blarney Road, Cork on 22nd December, 1998.
>
> PRESENT:
>
> Harry Rea,
>
> Ann Rea,
>
> PROPOSED
>
> That Terry Madigan … be appointed a director on 31st December 1998.
>
> That David Rea be appointed a director on his eighteenth birthday.
>
> That Ann Rea will retire as a director on this day.
>
> That Terry Madigan will retire as a director on this day.
>
> APPROVAL
>
> The decision was approved and seconded.
>
> There had been no other business and the meeting then concluded.
>
> SIGNED (Harry Rea)

Dated 22/12/98."

Mrs. Rea's evidence was that such meeting did not take place. Mr. Madigan's evidence was that he was appointed a director without any requirement to retire when David Rea became eighteen.

Mr. Rea refused Mr. Madigan access to the books and records of the company. He instructed the company's bankers and auditors to have no dealing with Mr. Madigan, told other parties that he alone controlled the company, failed to hold meetings required by law and/or failed to give Mr. Madigan notice thereof, purported to appoint his son as a director of the company on 9th September, 2002 when his son became of age, and has impeded Mr. Madigan from carrying out his duties as a director.

By way of relief, Mr. Madigan claims a declaration that *as* he was the legal and beneficial owner of one half of the shareholding, *he* requires Mr. Rea to procure an amendment to all CRO returns, seeks a declaration that he remain a director and entitled to take accounts and further seeks a declaration pursuant to s. 205 of the Companies Act that the conduct of Mr. Rea was oppressive to him and in disregard of his interests as a member of the company.

3. The defendant's case as pleaded: points of defence

By points of defence filed 4th February 2005, Mr. Rea claimed that Mr. Madigan was not entitled to sustain an action under s. 205 as he was not a shareholder of the company.

He denied that he was in breach of the pleaded agreement or that he transferred shares to the plaintiff. The plaintiff was not a shareholder in Monard.

The agreements were denied. It was admitted that the plaintiff paid £10,637 in respect of patent applications for Monard and that he worked on securing investment and expertise in marketing to establish the SystemZone process, including funding the setting up of SystemLink, but it was denied that Mr. Madigan paid that sum in pursuance of the pleaded agreement. The sum was paid in consideration of a share of the profits to be made from marketing the product invented by Mr. Rea which share of the profits was secured through Mr. Madigan's shareholding in SystemLink.

Mr. Rea said that his sole ownership of the patents of his invention was protected and "ring-fenced" in his sole shareholding of Monard. Ownership of the patents was separate from the sale and marketing of the product and was to be carried out by a separate company. He admitted that he directed the affairs of Monard in order to advance his own interests and in disregard of Mr. Madigan's purported interest as Mr. Madigan had no interest in Monard. He said that Mr. Madigan claimed a shareholding in Monard as a tactic to advance negotiations between Monard and SystemLink as to, in particular, the means of calculating the royalties to be paid by SystemLink to Monard.

He denied that he was or had been conducting the affairs of Monard in an oppressive manner or that he failed to act *bona fide* in the best interests of Monard.

4. Motions

4.1 By notice of motion dated 29th November, 2005, Mr. Madigan sought an order for the attachment and committal of Mr. Rea by reason of his failure to comply with undertakings given to the Court on 8th November, 2004 and asked that his defence be struck out by reason of his failure to make discovery in accordance with his agreement to do so. The motion also sought an order requiring Mr. Rea to render an account of all sums received in respect of the sale of the SystemZone products in breach of Mr. Rea's undertaking.

By order of Clarke J. made 19th December, 2005, an affidavit of discovery was to be delivered by 6th January 2006 and accounts of profits be delivered by 16th January 2006 with a replying affidavit of discovery.

By further order of 6th February, 2006, Mr. Justice Clarke, on reading the affidavits of Mr. Madigan, Mr. Ledwidge, Mr. Moran and the affidavits of Mr. Rea, ordered that Mr. Rea be precluded from offering an after sales service for "SystemZone" products until such time as the undertakings given by Mr. Rea to the court on 8th November, 2004 were discharged and that the action, when set down for trial, be listed with priority.

4.2 By subsequent motion returnable on 19th November, 2007, Mr. Rea applied for an order joining SystemLink as plaintiff and the company as a defendant with liberty to serve a defence and counterclaim. A variation of the terms of the undertaking given on 8th November, 2004, to be restricted to 50% of the shareholding of the company and 50% of the monies due by way of royalties in respect of the SystemZone products, was sought.

By order of Mr. Justice Clarke dated 28th January, 2008, the defendant's request to join SystemLink was refused, and the company was joined as a defendant and the undertaking of 6th February, 2006, amended.

4.3 By third notice of motion returnable for 16th July, 2009, Mr. Rea, on behalf of the company, sought an order striking out both the petition and plenary proceedings by reason of Mr. Madigan's alleged non-compliance with the order of 28th February, 2008, in that he failed to collect royalty payments.

Mr. Rea also sought the attachment and committal of Mr. Madigan's and of Mr. Rea's own solicitor.

On 16th July, 2009, Mr. Justice Clarke refused to grant the reliefs sought and directed that the monies held in joint account by Mr. Rea and Mr. Madigan's solicitors be paid into court.

4.4 At the commencement of the hearing of this action Mr. Rea, being no longer represented by solicitor or counsel, sought leave of the court to move a further two motions filed on 27th January, 2010. Counsel for the plaintiff formally objected. The Court allowed Mr. Rea to move the motions.

The first motion was headed "In the matter of falsifying evidence and in the matter of contempt in the face of the court and in the matter of the court confiscating undisputed funds which are not actionable". The motion sought reliefs which, other than in respect

of two paragraphs, 8 and 9, were identical to the notice of motion already refused by Mr. Justice Clarke.

The two additional matters were as follows:

> 8. An order pursuant to O. 31 of the Rules of the Superior Courts for the attachment and committal of the plaintiff herein by reason of his failure to comply with the order of Mr. Justice Clarke of 19th December, 2005.
>
> 9. An order pursuant to O. 33, r. 2 of the Rules of the Superior Courts requiring the court to make the appropriate payments on foot of the alleged claim to royalty agreements in respect of sales of Monard's patented products in breach of the plaintiff's commitment where his wrongful actions have caused the money to be held by the court (references were made as in previous paragraphs and in a motion before Mr. Justice Clarke).

The Court, having considered the affidavits filed on behalf of both parties and the submissions of Mr. Rea and of counsel for Mr. Madigan, ruled that the motions were substantially identical to those dealt with and refused by Mr. Justice Clarke and *accordingly* refused the reliefs sought.

4.5 The fifth notice of motion, the second before this Court, was for leave to add David Rea, the son of Mr. Rea, as the third party.

The Court also refused this application on the basis that David Rea was not a party to the alleged agreement, *and* not a necessary party to the proceedings.

Upon the refusal of the court to accede to his motions, the Court granted time to Mr. Rea to consider an appeal. The Court refused, however, to adjourn the hearing which had previously been listed on two previous occasions and which, on both occasions, had been adjourned on the motion of Mr. Rea.

The first day of the hearing and, indeed, part of the second day of the hearing dealt with Mr. Rea's applications and the time given by the Court for consideration of an appeal. The Court insisted that the matter proceed and requested the plaintiff's counsel to open the case on behalf of Mr. Madigan.

5. Plaintiff's evidence

5.1 Alleged agreement for shares
Mr. Madigan said he first met Mr. Rea in 1996 when he was introduced to a company called System Tech Ltd which had worldwide distribution rights for the products known as SystemZone. Mr. Madigan's company Coppercraft Ltd. decided that they would take the Irish agency for those products. In late 1997 the agreement with System Tech Ltd. was terminated because his company could not make any money as the product was too dear and too hard to sell to customers. He described the product as "a better mousetrap".

Mr. Rea told him that he had not been paid by System Tech Ltd. for royalties and he was terminating the agreement with them. He had a problem with regard to payment for the upkeep of the patent which would result in Monard failing. He described his agreement to pay for the upkeep.

In September, 1999, there was further money owed for an obligation fee, and further fees due in 2000. He agreed to pay those fees but would look for 50% of Monard. Mr. Rea agreed.

Mr. Madigan said that he paid the sum of £10,637 as follows:

> £6,100 was paid by cheque to the defendant personally on 17th February 1998;
>
> Three cheques in the sums of £3,100, £800, and £637 were paid to F.F. Gorman & Company, the patent agents on behalf of the company, on 23rd March, 9th May, 2000 and 18th January, 2001.

The initial investment was made on the basis of a shareholding in Monard. The extent of the shareholding was discussed but had not been agreed. It was to depend on the extent of future investment of funds, time and energy and how matters developed between the parties. The relationship continued, and in late 1999 and early 2000, it was agreed that the parties would proceed on the basis of a 50/50 split in the company.

It was decided between himself and Mr. Rea that they would try to improve the product and lower the manufacture cost base. The unit was redesigned from 1998 to 1999 to reduce costs.

He was referred to the letter sent by Dr. Finkenstedt to Mr. Rea dated 23rd December, 1999, regarding Michael Vaughan's confirmation to him that there could be no negotiation of sales rights without him being involved. Mr. Madigan said that they were looking for anyone who could take an interest in the sale of the units. Mr. Rea, unknown to him, had approached Mr. Vaughan. A draft agreement from Dr. Finkenstedt dated 16th December, 1999 between Mr. Vaughan, Mr. Rea and Dr. Finkenstedt was sent to him. He said that he was livid when he saw it and, as owner of 50% of Monard, he believed that no one else was going to get involved in the distribution rights without him being part of it. He rang Mr. Vaughan to so inform him. As a result Mr. Vaughan contacted Dr. Finkenstedt. That led to the meeting of 10th January, 2000. Mr. Rea came from Cork for that meeting in Brooks Hotel. Dr. Finkenstedt very specifically asked who owned the shareholding in Monard. Harry Rea replied that Mr. Madigan owned 50% and he owned 50%. Dr. Finkenstedt also asked who owned the shareholding in Zoned Heating Systems and was told the same.

After the meeting Mr. Rea suggested that they visit his solicitor, P.J. O'Driscoll on 27th January. Both Mr. Madigan and his wife, Maura Madigan went down by train and were met by Mr. Rea and went to P.J. O'Driscoll's office. They discussed setting up a new company which they called New Co. which subsequently became SystemLink Ltd.

He said that the subject of Monard came up when Mr. Edward O'Leary of P.J. O'Driscoll suggested that Mr. Rea should have 51% of SystemLink and Mr. Madigan 49%. Mr. Madigan did not agree with that.

Mr. Rea brought them back to the station. They had a cup of coffee and Mr. Madigan told Mr. Rea that he wanted 50% of SystemLink and they shook hands on that. SystemLink Ltd. was incorporated on 2nd March, 2000.

Further fees were required to be paid for the patent. Mr. Rea had agreed to bring up papers on 22nd March, 2000, which were to include stock transfer forms. He paid the fees on 23rd March, 2000.

He believed that Mr. Heffernan was the electronic engineer who designed the controlled electronics for SystemLink but played no part in Zoned Heating Systems Ltd. He was an employee for a while in SystemLink Ltd. He had his own business management system business.

Mr. Madigan referred to the successful introduction of new investors into SystemLink being Mr. Moran, Mr. Courtney and Mr. Fogarty.

He said he had never met Mr. Rea's accountants, Vaughan & Associates nor Mr. Eric Cotter, at the time but he believed that the latter prepared the documents which Mr. Rea brought up to his house for signing.

The new investors were told that the patents were owned by Monard and that the rights to those products were owned by SystemLink.

5.2 SystemLink

SystemLink was incorporated on 2nd March, 2000 by Mrs. Madigan and the parties were equal shareholders. The parties signed a letter dated 22nd March, 2000 giving SystemLink exclusive rights to the SystemZone process.

That letter did not mention Monard specifically.

The letter was, it seems, drafted by Mrs. Madigan and sent by Mr. Madigan to Mr. Rea and referred to the setting up of SystemLink in the following terms:

> "[it] is the final step in the formalisation of our agreement that we could jointly explore, develop and market SystemZone and SystemLink products. On the basis of that agreement £6,100 was paid by me to you in February 1998 to enable the patenting to proceed. There was also the considerable investment of my own time and expertise prior to 1998 and since."

The letter continued as follows, making reference to a previous right granted to another party, Zoned Heating Systems Ltd., in respect of which no evidence was given at the hearing of this action:

> "In the light of the further financial investment now being required of me in regard to protecting the patent and forming the new company (with its ancillary costs) and of course all the investment of both my time and my expertise in the market, I think it is appropriate to put in writing the nature and content of our agreement and I would be obliged to receive your confirmation that this is also your understanding of our agreement. Therefore aside from any right or interest which we have granted Zone Heating Systems Ltd, SystemLink Ltd. will have the sole and exclusive right to develop the market for SystemZone and SystemLink products."

The plaintiff gave evidence of his understanding that the phrase "we have granted" referred to Mr. Madigan and Mr. Rea as shareholders in Monard.

Mr. Madigan said that SystemLink as licensee of Monard attracted a considerable amount of inward investment. It was intended to grow considerably larger. Mr. Rea was initially a director and 50% shareholder in SystemLink. He resigned as a director in April 2001 of his own volition and did not invest any further money in SystemLink. By 2004 Mr. Madigan had invested the sum of €526,000 in SystemLink, worked for that company and gave a personal guarantee to the bank together with Mr. Courtney who had joined as director and shareholder.

Mr. Madigan said that Mr. Rea remained a highly placed employee of SystemLink, effectively in charge of technical operations, until late 2003 and early 2004 at which point the breakdown in the parties' relationship became irretrievable. Since that time Mr. Rea disputed the royalty agreement. The investment secured by SystemLink was on the basis of SystemLink having rights to the SystemZone process. Mr. Rea was a party to the procuring of that investment. Until December 2003, Mr. Rea did not indicate that the relationship between the companies could be terminated or that he considered there to be no agreement between Mr. Madigan and Mr. Rea in respect of the transfer of the former's shareholding in Monard.

The plaintiff also gave evidence that the defendant reached an agreement with him in 1998 and 2000, sought to give effect to this agreement in 2001, and sought to resile from it in 2003. It was submitted that that chronology was not seriously disputed although the implications of it and what exactly was said were disputed. He had invested considerable time and effort in Monard.

Mr. Madigan said that the matter had arisen when Dr. Dieter Finkenstedt, an Austrian commercial agent who had met the parties on 10th January 2000, with a view to building a commercial relationship, inquired as to the position of Monard. He was told by the parties that Monard owned the intellectual property and that the parties owned Monard on a 50/50 basis. (Dr. Finkenstedt, in his evidence, believed that this was the position but Mr. Rea, in his evidence, said that Dr. Finkenstedt was mistaken.)

The plaintiff's evidence was that, some weeks later, on 27th January, 2000, he and Mrs. Maura Madigan, his wife, who was a solicitor, went to a meeting with Mr. Edward O'Leary of P.J. O'Driscoll, solicitors, to discuss the incorporation of SystemLink which was also to be held on a 50/50 basis.

(The defendant disputed that Mrs. Madigan was present. He also disputed that it was said at that meeting that Mr. Madigan was a 50% shareholder in Monard.)

Mr. Madigan said that, in January, 2001, Mr. Madigan signed documentation which Eric Cotter, of John P. Vaughan & Co., the accountants for Monard had prepared. These were returned to Mr. Rea with a covering letter dated 29th January, 2001.

That letter stated, *inter alia*, as follows:

> "I am enclosing a stock transfer form which I would be gratefully obliged if you would sign. The documents should then be returned to your accountants for lodgement in the Companies Office with the exception of the stock transfer form which your accountant will deal with in the normal course, *i.e.*, stamping etc. and which will presumably ultimately be lodged with the rest of Monard (Research & Development) Ltd. paperwork. Please forward me a copy of the stock transfer form

when you have signed same."

Mr. Madigan, in direct examination, referred to Mr. Rea and himself being part of the new company, SystemLink and that "we also owned Monard".

In a letter from him to Mr. Rea, dated 16th December, 2003, Mr. Madigan said that he had phoned Mr. Rea three times since 11th December and that he had said he would call back. Mr. Madigan continued "As 50% shareholder and director in Monard ... I am calling on you to forward the aforementioned to me by return".

Mr. Madigan received an e-mail from John Vaughan, Monard's accountant on 9th January 2004, reminding him of the arrears in annual returns, and stating: "I confirm that we did not carry out any work in relation to share transfers. Please refer to company secretary (Mr. Rea)".

In cross-examination by Mr. Rea, Mr. Madigan said that on 17th February 1998, he paid £6,100 for 40% (of Monard). When he paid £3,100 he "then got the balance of his shareholding, which brought my shareholding to 50%." He said that he took it that he was already an owner of Monard but had nothing in his possession if Mr. Rea got "hit by a bus". Both had agreed to licence SystemLink. Mr. Madigan had not the formal documentation which Mr. Rea ultimately executed.

Mr. Madigan could not offer a view as he was not a party to that letter. He had signed his name on the correct forms and only later noticed alterations in CRO and did not know why the share that was supposed to come from Carol Long went to Harry Rea and then to him.

Mr. Rea signed the share transfer form and did not dispute his signature.

(Mr. Rea denied ever seeing or receiving that letter. Under cross-examination he said he could not remember it.)

The Form B1 annual return made in respect of the financial year 31st December, 1998, was filed in CRO on 20th October, 2001, listed Mr. Rea as secretary. It was signed by him as secretary and also by Mr. Madigan as director.

The return listed Mr. Rea as the holder of one ordinary share and ten A ordinary shares. It listed Carol Long as holding no shares but indicated that one share had been transferred on 31st December, 1998, from Ms. Long to Mr. Madigan. Mr. Madigan is then listed as the holder of this share. Others are listed as shareholders of B, C and D ordinary shares.

Both Mr. Rea and Mr. Madigan are listed as directors.

The B1 returns in respect of the financial years, 1993 to 1999 were made up to 30th July 1999, and were presented by Mr. Rea. It included Mr. Rea and Mrs. Rea as directors together with Mr. Madigan. The returns were signed by Mr. Madigan and Mr. Rea as secretary.

(Mr. Rea's explanation for the returns made to the Companies Office was that the share was to be held by Mr. Madigan in trust for Mr. Rea.)

Mr. Madigan said that in November and December 2000, Shay Moran, Peter Courtney, Eamon Heffernan, Mr. Rea and Mr. Madigan met in the latter's house for the purpose of investing in SystemLink.

Mr. Madigan said that Mr. Courtney specifically asked both parties who owned the intellectual property and who owned the company and was told by the parties that the company was owned 50/50 between the plaintiff and the defendant as was SystemLink Ltd. and that others would be investing in SystemLink Ltd. This corresponded with the evidence of Mr. Courtney. Mr. Moran did not hear that conversation but believed Mr. Courtney did ask. (Mr. Rea stated that that was a lie.)

The evidence in relation to the Register of members was unsatisfactory. Mr. Rea was, at all material times, the Secretary of Monard.

He had indicated that Messrs. Clibborn & Co. had the Register. Mr. Madigan had asked that firm to deal with the discrepancy of Ann Rea's inclusion in some returns and the blackening of her name in others.

No evidence was given in relation to the whereabouts of the Register or of any inquiries in relation thereto.

5.3 Share transfer form

Mr. Madigan's evidence was that the CRO documents which were brought up to his house by Mr. Rea were photocopied by him and both he and Mr. Rea signed them in his house. There was no stock transfer form, so his wife prepared a stock transfer forms which Mr. Madigan filled out and gave to Mr. Rea with a covering letter. He identified that as the form which was subsequently signed by Mr. Rea following that meeting on 29th January, 2001. The stock transfer form was accompanied by a letter of 29th January, 2001, addressed to Mr. Rea for John P. Vaughan & Co. It stated:

> "Dear Sirs,
>
> I have signed the documentation which you sent to Harry Rea and which you forwarded to me. I am returning herewith, via Harry, the documentation duly signed, amended as appropriate."

The letter was handed to Harry Rea with the CRO documentation and share transfer form for Mr. Cotter.

Mr. Madigan said he received no correspondence from John Vaughan or from Mr. Cotter. He said there was never any documentation in relation to trusts or otherwise sent to him by anyone at anytime. The matter was not raised until Mr. Rea contacted him in December, 2003.

In some of the returns the name of Ann Rea was listed as director but on other returns there was a black mark obliterating her name as director. Mr. Rea on inquiring had said it was a mistake and that Ann Rea was no longer a director of Monard. In December 2000 Mr. Madigan asked Clibborn and Co. to sort out the discrepancy.

In October, 2001, "all of the paperwork was lodged in the company's office" – the returns to CRO date-stamped 10th October, 2001 with a subsequent date stamp of 22nd November which, Mr. Madigan said, were the documents lodged by Mr. Rea's accountant.

Mr. Madigan said that he actually forgot about getting the share transfer sorted out once the returns had been made to the CRO. The matter only arose when Mr. Rea fell out with SystemLink Ltd. in December, 2003.

5.4 Resignation of Mr. Rea from SystemLink

Mr. Rea, as director resigned from SystemLink on 10th April, 2001.

Mr. Madigan said that Mr. Rea did not want to be involved directly with the royalty agreement negotiations with SystemLink Ltd. and wanted to leave the matter to the plaintiff. He referred to the memorandum entitled "Harry's deal".

"Harry's deal" benefited Mr. Rea and was discussed and agreed with Shay Moran and Peter Courtney on 6th June 2001. The eight points of the agreement were as follows:

> "1. £60,000 plus expenses, from 1st April (total package);
>
> 2. expenses on a company credit card;
>
> 3. gross equivalent of IR£300 per week salary (later agreed to IR£21,000 p.a. gross);
>
> 4. system CAD brought from Optiflex and invoiced;
>
> 5. Hibernian Heating Components – (consulting services to be invoiced);
>
> 6. royalties – go to trust/co. set up by Harry;
>
> 7. resigns from Board for personal reasons;
>
> 8. Terry M. to represent Harry's interests on Board."

The plaintiff's evidence was that this represented what the defendant's entitlement was on the occasion of his resignation from the board of SystemLink Ltd at the time of the defendant's family law proceedings.

Mr. Madigan said he was assigned to look after the negotiations with the royalty agreement with SystemLink Ltd and in Summer 2002 came to an agreement with Mr. Moran that the percentage would be 6%. That was agreed and he kept Mr. Rea appraised of the agreement. The reason it was no longer 10% was that Mr. Rea and himself were shareholders in SystemLink Ltd and would hopefully make money out of SystemLink as well as the royalties. The patent royalty agreement was drawn up by his wife, Maura Madigan, on the basis of the agreement previously made with System Tech Ltd.

5.5 Breakdown towards December, 2003

Mr. Madigan said he was, in effect, acting as the CEO of Monard.

The value of the shares held by the plaintiff and the defendant were each worth approximately €954,000 in respect of their 22.5% shareholding in SystemLink in mid-2003. The valuation was on the basis of the investment of Enterprise Ireland Ltd for 5% of SystemLink. At that stage Mr. Madigan said that Monard was fully established on the market and was on the cusp of a major building boom with a potential to attract new investors.

Mr. Madigan's evidence was royalties at 6% of sales amounted to €300,000 at the date of the trial. The royalties would have amounted to a lot more but for the litigation. In addition, the parties had the benefit of their salaries.

Following the proceedings, Mr. Madigan was forced to guarantee loans and invest a further €526,000 in SystemLink.

Mr. Rea alleged that Mr. Madigan had no hand, act or part in Monard. In a fit of pique, Mr, Madigan said "I am the CEO" and signed letters as chairman at a time when Mr. Rea was denying Mr. Madigan's shareholding. Mr. Rea refused to sign the agreement. He believed that the reason was that Mr. Rea had already done a deal behind the other parties' backs with Jim Tangley of Kendall Teoranta, a company which SystemLink had refused to merge with.

Roberts & Co., and in particular, Gail Ellis, were appointed by Mr. Tangley to do a due diligence of SystemLink.

When difficulties arose between Mr. Rea and SystemLink towards the end of 2003, Mr. Rea sought to have Gail Ellis perform a due diligence review of SystemLink for Mr. Rea's family law litigation.

Mr. Madigan said it was clear that the information that Mr. Rea was looking for had nothing to do with his request for information for the family law case. SystemLink refused to deal with Ms. Ellis

At a meeting of 13th November, 2003 in the SystemLink offices, Mr. Rea said that if he did not get the information he would "push the nuclear button".

Mr. Madigan contacted Eric Cotter whom, Mr. Madigan believed, Mr. Rea trusted in order to get Mr. Rea to sort the matter out.

He referred to a report from Mr. Cotter dated 21st November, 2003, in relation to the calculation of patent royalties due up to 30th September, 2003.

The report referred to Monard not having received any payment royalties since commencement of trading. He said that he had been told by Peter Courtney that one of the issues was that the company (in SystemLink) was owed €38,802 from Zoned Heating Systems which was a company connected to Monard. Mr. Cotter's letter referred to his having discussed these figures with Gail Ellis.

Mr. Madigan referred to an email dated 24th November, 2003 from Mr. Cotter to him which stated:

> "Terry,
>
> please find attached report also in order to sort Monard accounts we will need the following:
>
> (1) Agreement on any royalties owned by SystemLink/zhs.
>
> (2) Sort out shareholding in Monard officially.
>
> (3) Get accountant signed off."

Mr. Madigan understood that the assorted sorting out of shareholding referred to having a stamped stock transfer form and shareholding handed to him.

He said that on 28th November, 2003, he tried to sort "this madness out" and met Eric Cotter and Harry Rea. At one point Mr. Cotter asked if he would accept 49% and he said he would not. Mr. Cotter said that Mr. Rea had come out with a story about a letter of trust. When Mr. Rea was absent Mr. Madigan said he told Mr. Cotter that none existed and that Mr. Cotter agreed with him.

Mr. Madigan wrote to Mr. Cotter on 9th December, 2003, regarding the holding of shares in trust for Mr. Rea. Mr. Madigan wrote that he was amazed by that suggestion which was simply not true and asked Mr. Cotter to tell him on what basis he believed that he did not own the shareholding.

SystemLink had agreed to commence payments of current royalties immediately in accordance with the patent agreement, upon signing, on a phased basis of €60,000 over a 24 month period. Mr. Madigan said that Mr. Rea had refused to sign the patent agreement with SystemLink. Mr. Rea owned 22% of SytemLink and 50% of Monard and was jeopardising the future of both companies. SystemLink had already raised large sums to invest in the development of the market for the patent owned by Monard by way of shareholder and BES investment, bank loans and personal guarantees.

He said that the use of the patent had transferred to SystemLink and the only issue was royalty payments.

Mr. Madigan concluded by saying that if Mr. Rea refused to deal with those issues he would have no alternative but to seek legal advice until the matter is resolved.

The meeting was held at Rochestown Park Hotel the following day, on 10th December, 2003. This referred to Mr. Rea's expression of disapproval and of a fractious discussion in regard to the ownership of Monard.

Mr. Moran had, according to the minutes, asked Mr. Rea if he thought there was an existing agreement between Monard and SystemLink. Mr. Rea replied that there was an "interim" agreement.

Mr. Rea said that Mr. Madigan was a shareholder "just like the company formation type". He thanked Mr. Cotter for proving that Mr. Rea had wrongly accused SystemLink of robbing him. Mr. Rea had referred to Mr. Madigan "wearing his Monard hat" to finalise the details of the agreement.

Mr. Rea referred to having "trumps up his sleeve" which would show who owned what.

Mr. Cotter said that he had been instructed not to comment about the returns made to the CRO showing Terry Madigan as a shareholder.

Mr. Moran advised the meeting that on behalf of SystemLink he had been dealing with Terry Madigan as there was an understanding that he was appointed to represent Monard in its various dealings. The agreement had been in place for two and a half years and had accrued royalties on foot of an agreed percentage payable from October, 2001 when Monard had granted the exclusive rights to SystemLink in April, 2001 pursuant to a letter dated April, 2001 signed by Mr. Rea and Mr. Madigan.

Mr. Moran formally asked the parties as directors if, on behalf of Monard, they were prepared to sign the patent agreement as presented. Mr. Madigan said he was. Mr. Rea said, as 100% shareholder, the decision fell to him and him alone.

The plaintiff says that unsubstantiated allegations of fraud and forgery were made by the defendant repeatedly in open court, to the Office of the Director of Corporate Enforcement, and to the Gardaí, in relation to the alleged doctoring of documents and forging of signatures relating to the share transfer forms and the Enterprise Ireland document. The defendant's forensic specialists, Mr. Nash and Mr. Flynn, who had examined the documents of Enterprise Ireland Ltd, were never asked to examine the documents relating to the transfer of shares. (They did not, in any event, give evidence to the Court).

A new shareholders' register, created the day after the meeting in Rochestown Park Hotel on 10th December, 2003 when the relationship with SystemLink broke down irretrievably, was created to reflect the defendant's view of the ownership of the shares. At that stage the defendant had share transfer forms which dated from 1998, stamped by the Revenue Commissioners so as to formally place himself on the register.

5.6 Cross-examination of Mr. Madigan

Mr. Madigan said that he had contacted John Vaughan & Associates, the accountants for Monard to look for the books. They told him that they had been handed back to Mr. Rea as they had not been paid their fees for preparing the returns. They regarded Monard as an insolvent company and were happy that, on Mr. Madigan's contact, they would be paid. He said that he had made efforts to try to get outside investors to put the money into SystemLink for the intellectual property which was owned by Monard.

Mr. Rea referred to Mr. Clibborn who had written directly to him. Mr. Madigan was not aware of that letter of 19th December, 2000.

Mr. Rea said that Mr. Clibborn was a C-type shareholder.

The Court notes that Mr. Clibborn, does not appear to be included as a C shareholder, as identified by Mr. Rea in returns made to the Companies Office but that Mr. Heffernan was returned as the owner of ten C shares.

Mr. Rea referred to share certificate No. 10 in the name of Carol Long, an employee of Edward Clibborn, dated 13th July 1995 who was a nominee subject to a declaration of trust. Mr. Rea said that she had no recollection of transferring the nominee share to Ann Rea, his wife. He said that Mr. Clibborn had ceased to practise and that is why he changed accountants.

Mr. Madigan said he could not comment on that.

Mr. Rea referred to Coppercraft returns. Mr. Madigan said that they had nothing to do with the company returns made by Monard. The Court asked him to deal with the Monard share register but Mr. Rea insisted that he had not been allowed to question Mr. Madigan on the statements he had made. He asked about the meeting in Mr. Madigan's house in January 2001 and the stock transfer form which Mrs. Madigan "happened to have in the house that time".

Mr. Madigan said that he and Mr. Rea signed the documents.

A letter enclosing a stock transfer form for Mr. Rea to sign was given to him. Mr. Rea said that that form said that the share involved Carol Long which complied perfectly with Mr. Clibborn's letter: she had to be replaced as a nominee shareholder. Mr. Madigan said that he had no opinion in relation to Mr. Clibborn's letter as he had not seen it and that he had not contradicted his statement with regard to the stock transfer form.

Mr. Rea said that the share was in a nominee shareholder's name and that Mr. Clibborn had said to change it and that Mr. Madigan's signature verified that "that is what happened".

Mr. Rea referred to the B 1 return made by Mr. Rea which included Mr. Madigan as shareholder. Mr. Rea referred to Mr. Clibborn's letter to him relating to the replacement of Carol Long as a nominee shareholder. Mr. Madigan said that when he searched the Companies Registration Office in 2003 the share was transferred from Carol Long to Harry Rea and from Harry Rea to him. He said that these seemed to have been "tippexed" with misspellings after he had signed it and before Mr. Rea handed it to his accountants. Mr. Madigan said that he had not got an explanation for what had happened but as far as he was concerned he had received a 50% shareholding in Monard and had signed his name on the correct forms. The documents were given to Mr. Rea and Mr. Madigan presumed that the accountants lodged them in the CRO to effect his transfer. He had never met Mr. Rea's accountants. He said that Mr. Rea had turned up at his house on 29th May, 2001. (There was some confusion as to whether that was the 29th January).

Mr. Farrelly intervened to clarify exhibits TM 7 and TM 9. The former related to the transfer in January from Carol Long to Terry Madigan.

Mr. Rea put it to Mr. Madigan that he did not turn up at the latter's house.

The matter seemed to be going around in circles including references to royalties not being paid and the Court suggested that the matter be left to submissions at the end of the evidence. On 29th May Mr. Madigan said that Mr. Rea had brought up some company accounts documents to him in respect of Monard which he photocopied. He could not make head nor tail of them and gave them to his wife.

Significantly, Mr. Rea did not ask whether the share transfer form was forged or tampered with notwithstanding his questioning, to that effect. The Court noted that Mr. Rea did not plead that the share transfer form was a forgery. Neither Mr. Sean Lynch nor Mr. James Nash, whom Mr. Rea had indicated were forensic document examiners, whom he had employed in relation to the Enterprise Ireland document, did not make a report or, indeed, give evidence.

The cross-examination continued for a further day. Mr. Rea told the Court that he was having difficulty with "the nature of my confinement in cross-examination of the witness and plaintiff, with respect of the plaintiff petitioners interlocked claim on the same issues and counter-claim on the same issues" and sought directions from the Court. He said he had difficulty not being able to address what happened actually.

Mr. Farrelly said that Mr. Rea had refused to file witness statements as directed by Ms. Justice Laffoy. He did not particularise forgery, fraud or any similar allegation. Fraud was not pleaded. Accordingly, he should be restrained in respect of these matters.

Mr. Rea alleged that some documents were missing in discovery. He asked for directions of the Court.

The Court made the following ruling:

> Mr. Rea said he is in difficulties, that he is confined, over confined, I think it is fair to say in relation to the questions that he can ask Mr. Madigan. He says he cannot get to the source of the problem, and that the alleged history, according to what he said, is not the truth, and then he asked for the Court to give directions in relation to certain matters which he said would facilitate him.
>
> Mr. Farrelly raised the pleading point in relation to the stock transfer form, which is the issue which we are dealing with at the moment, and it is a central issue, it seems to me, in relation to the plaintiff's claim. Mr. Madigan has given evidence in relation to that.
>
> Mr. Farrelly says the forgery is not pleaded, and that in the counterclaim, there is nothing which deals with this issue; that it was not referred to in reply by Mr. Rea, though clearly the matter that he said he could not plead forgery as he did not have discovery. Mr. Farrelly referred to their being no witness statements as required by Ms. Justice Laffoy. He also referred to reports from both Mr. Nash and Mr. Flynn which did not deal with the share transfer.

Mr. Madigan had asserted that there was an oral agreement in relation to shareholding in return for certain consideration that was paid. What was critical in the written evidence in relation to that is a document which purported to be his stock transfer form signed by Mr. Rea. The issue in relation to cross-examination at this stage is in relation to that and not in relation to any other matter.

The Court had been at pains during the week that the matter was to be kept within the pleadings including matters that Mr. Rea believed to be relevant. He was at liberty to cross-examine from the intimate knowledge that he had, given that it is his patent that

was put into a company in which he was the shareholder, and it was alleged that afterwards there was an agreement that Mr. Madigan would be a shareholder. That is the issue. That is the central issue, and it seems to me, and the Court has already heard what it had to say with regard to peripheral matters, which indeed may be a counterclaim, but the issue at this moment is not part of the counterclaim.

The Court allowed cross-examination to continue, it appears at this stage inappropriate for the Court to deal with matters which were, as I understood it, subject to review by the Master of the High Court in relation to discovery and not before the Court at this stage.

The reference to the Master was Mr. Rea's application before the Master at the commencement of these proceedings in relation to a motion which this Court refused.

Following this ruling the matter of the share transfer form and the returns were revisited by Mr. Rea.

Mr. Madigan said his understanding was that the stock transfer form was retained by the person "who owns the form" and that the accountants do not dictate who owns the share. These documents would be lodged in the CRO. Mr. Madigan said he noted that there were amendments made in the documents filed with the CRO in 2003 which appeared to have been tippexed. The person who transferred the share to Terry Madigan was Harry Rea and not Carol Long. Mr. Rea said there was no doubt that his signature was placed on the B 1 form. He seemed to be confused in relation to a letter dated 29th January 2001 which came out of the blue.

Mr. Farrelly referred to the Court to Mr. Rea's affidavit where he discovered that letter.

Mr. Rea said that:

> "There were things coming into my vision that had they happened before or didn't happen before, five years later, I'd say to you that you will note right through this utter confusion I actually put in an affidavit that if this is my signature on a document, I have to put my hands up. I have no idea what is going on. I know that I didn't sign any document to give away a share. This is one fact…."

The Court indicated that Mr. Rea needed to cross-examine Mr. Madigan in relation to the stock transfer form on 29th May, 2001.

Mr. Madigan said it was correct that Mrs. Madigan typed up another stock transfer form and that Mr. Rea had signed it in front of both of them. That was what happened.

Mr. Rea referred to the particulars of breach as follows:

> "The plaintiff furnished the defendant with the share transfer form under cover of a letter dated 29th January 2001 to ensure the transfer was carried out correctly, which was signed by the defendant. However, the terms were not filed until October of 2001 as the annual accounts of the company were not up to date. In May 2001 the share transfer form signed by the defendant was returned to the plaintiff with the other CRO documentation for further work. Once the documentation was in order it was returned to the defendant and the defendant represented to the plaintiff that the share transfer form had been properly filed and executed."

Mr. Rea asked if Mr. Madigan saw a contradiction there.

Mr. Madigan said there were two stock transfer forms. The second was signed by Mr. Rea.

Mr. Rea then put it to Mr. Madigan that the form had three straight lines and put it to Mr. Madigan that they appeared to be his signature but the page seemed to have been modified. Mr. Madigan said that Mr. Rea signed the document in front of him. Mr. Rea persisted in referring to photocopiers and printers with different devices and asked whether the signature was not placed there by some artificial means besides hand writing. Mr. Madigan again replied that Mr. Rea personally signed his signature on the document.

With reference to discussions regarding a deal with Kental Teroanta, Mr. Madigan said that both Shane Moran and Peter Courtney had done due diligence and found out that no benefit for SystemLink in such a deal. The text sent by Mr. Rea: "I have done the deal with Jim Tangley and Monard" was evidence of his decision to go into business with Mr. Tangley notwithstanding the view of SystemLink.

Mr. Rea sought to give something to the Court for personal viewing. The Court declined. Mr. Rea sought to dispute the fact that if his wife arrived at the Court, in relation to mental capacity at a time when they were giving evidence. He said that his children would find it necessary to come to refute. He agreed that none of that was in his defence or counterclaim.

Mr. Rea put it to Mr. Madigan that he had described himself as the CEO of Monard in relation to negotiations with SytemLink Ltd. on the patent royalty agreement. He replied that he was doing the negotiations as agreed by Mr. Rea. He said that Mr. Rea had said to Shane Moran that "Mr. Madigan is looking after my interests in Monard as he is the shareholder of same".

Mr. Rea referred to Point 6 which referred to royalties to go to the trust company set up by Harry and not Harry and Terry. Mr. Madigan said that he was told that in order to try and avoid paying Mr. Rea's wife money that he asked the Board whether he could set up a trust company for his share of the royalties in relation to his share of the royalties. Mr. Madigan said he was to represent Mr. Rea in relation to dealings between Monard and SystemLink, that he was a director and shareholder. He had bought his shareholding.

Mr. Rea asked why the note to Mr. Shay Moran did not say that Terry Madigan was to represent Monard. Mr. Madigan said that that question should be direct to Mr. Moran as the note was drafted by Mr. Moran.

Mr. Madigan said that he did not sign the agreement with SystemLink as he believed it would have been a sharp thing to do as they were partners in Monard. Mr. Rea asked why monies were kept in SystemLink and not paid to Monard. Mr. Madigan said that the patent royalties were lodged in court and were not denied. He said that Mr. Rea wanted to deal with Jim Tangley of Kental and to dispense with the shareholders in SystemLink and needed to take possession of Monard. He said it was agreed that SystemLink could not afford to pay royalties at the time and that Mr. Rea agreed after discussion. When the money was ready for distribution, Mr. Rea fell out with the shareholders. Mr. Madigan said that SystemLink had made huge losses and needed further investment. By 26th March, 2004, there was a bank account opened for the royalties of Monard where both Mr. Madigan and Mr. Rea were signatories of SytemLink No. 2 account. There was no letter that allowed money to be taken from any bank account and given to Mr. Rea which he

categorised as a "little anomaly".

Mr. Madigan agreed that he had written letters saying that he was CEO and Chairman of Monard. Mr. Rea said that he advised SystemLink to ignore the invoice and instructions.

Mr. Rea referred to a letter of 13th February, 2004, where Mr. Madigan wrote to Mr. Rea saying that he had advised SystemLink to ignore his invoice and instructions. He said that this was until the board of Monard had met.

Mr. Rea said that Mr. Madigan was presenting himself as putting all the money in (to SystemLink) and that he had come along and offered Mr. Rea, "a poor pauper from Cork" an opportunity. This factual evidence showed a completely different picture. He said that Mr. Madigan was never to have a share of any description in Monard. He was to have a share only in trust held for Mr. Rea's authority and for his benefit. The share was based on a declaration of trust arriving back. Mr. Madigan never sent it back so the share never changed. He said he signed the form (to CRO) based on a declaration of trust being sent. He said that Mr. Cotter would give evidence to say that he sent it to Mr. Madigan. He did not transfer the share. Mr. Edward Clibborn would be coming to Court to give his evidence.

The Court asked why they were arguing about the share transfer being a forgery even though that was not pleaded. Mr. Rea said that the transfer was based on a declaration of trust, in accordance with Edward Clibborn's letter, that it would be to a replacement nominee shareholder.

Mr. Farrelly had asked Mr. Madigan had he ever received a declaration of trust and he replied he had not. This needed to be put to Mr. Madigan in cross-examination by Mr. Rea.

Mr. Rea referred to contacts with Ernst & Young and to Edward Clibborn and that some documentation was left in Mr. Madigan's house and he forgot that they were there. Mr. Madigan asked him to point out the documents he was referring to. Mr. Farrelly intervened to say he would like Mr. Rea to ask Mr. Madigan to identify the documents which he said were stolen and retained. Mr. Rea said he was not prepared to ask this question that second.

Mr. Rea referred to a letter from Ernst & Young on 12th December, 2003 which state, *inter alia*:

> "A stock transfer form effective 31st December, 1998 from Harry Rea to Terry Madigan was included in the documentation provided. However, as it has not been duly stamped by the Revenue Commissioners, an entry has not been made into the statutory registry, register section 81."

Mr. Rea said that Mr. Madigan was a director but was never a shareholder as shown on the register.

Mr. Rea put it to Mr. Madigan that Mr. Eric Cotter would say that he had sent him a declaration of trust along with company documents and asked him if he disputed that document. Mr. Madigan said he never received anything from Mr. Cotter except the company documentation which he signed. He absolutely disputed having received a declaration of trust.

Mr. Madigan was asked whether in a meeting of 28th November, 2003, that Mr. Cotter said that Mr. Madigan had a share "of the trust". Mr. Madigan replied that was the first time he had ever heard that a trust was mentioned. He said that Mr. Rea had run out of the board meeting in SystemLink that day and that he, Mr. Madigan, went to the car park to try to calm him down which was in Rochestown Park. Mr. Madigan said that Mr. Rea had accused the shareholders and directors of fraud and taking money they should not have. He hadn't accused Mr. Madigan who was not being paid one penny from SytemLink at the time. He had phoned Vaughan's office and spoke to Eric Cotter and ascertained that there was no declaration of trust.

Mr. Madigan said that Mr. Rea's affidavit of discovery in the family proceedings in relation to shareholding and earnings which stated that Mr. Madigan owned 50% of the shareholding. He asked if Mr. Rea was denying that he had made such an affidavit.

The Court intervened reminding Mr. Madigan that his counsel could cross-examine Mr. Rea on the matter.

Mr. Rea explained that he had not lived with his wife since 1998.

Mr. Madigan said that at the time in late 2003 the directors and shareholders of SystemLink were in a panic. They did not know what to do. He rang Eric Cotter as Mr. Rea was calling to SystemLink and making wild accusations at a time when he was doing a deal with Jim Tangley. The only way he could do that was by going through him. SystemLink did not want to have anything to do with Jim Tangley in relation to a merger of companies or a buy-out.

6. Dr. Dieter Finkenstedt

Dr. Dieter Finkenstedt graduated with a doctorate in law in Germany and obtained an MBE after a scholarship to Cambridge University in 1967/1968. He had been in international trade for over 40 years when in the mid 1970s he became involved in products in the heating and plumbing industry and made several visits to Ireland each year. His attention was drawn to a new product in the heating field which was known as SystemZone and that is how he came to know Mr. Rea towards the end of September 1999. He believed that when he first met Mr. Rea that Mr. Rea exclusively owned the SystemZone process.

He agreed that in September, 1999, there was no mention of Monard.

His role was placing technical products on foreign markets. He regarded the SystemZone process as unique but requiring a lot of manpower input for the purpose of explaining it to plumbers and to financiers. The latter could not be found.

If there was no intellectual property you would not find investors.

He said that after meeting Mr. Rea he continued to try to find out who owned the intellectual property rights. He got a message from Mr. Vaughan, who was negotiating the manufacturing rights on behalf of the English company, that Mr. Terry Madigan was also involved in the issue. At that stage he did not know nor had he met Mr. Madigan.

He was referred to his fax dated 23rd December, 1999 to Mr. Rea which began as follows:

> "Following our brief phone call yesterday I would like to clarify that I have no doubts whatsoever in Mr. Madigan's correctness and honesty, let alone in your own.
>
> Michael Vaughan (Monard's accountant) confirmed to me that his firsthand impression after talking to Mr. Madigan himself only a few days earlier was that Mr. Madigan very decidedly put the point across that there is no negotiation of sales rights without him being involved.
>
> Perhaps we can get the whole thing unstuck and make a step forward during my next stay in Dublin."

He explained that he had known Mr. Vaughan since 1975. Mr. Vaughan was involved in the issue of patent rights and was negotiating manufacturing rights for the SystemZone manifold on behalf of an English based company.

On 10th January, 2000, he had arranged to meet Mr. Rea at Brooks Hotel in Dublin. He was picked up at the airport by Mr. Madigan.

His main concern was who owned the patents or who owned Monard because it was the issue on which he would decide whether just to walk away from the whole thing or to get involved.

He was asked whether Mr. Madigan and Mr. Rea told him who owned the company and the patents and he replied as follows:

> "They explained to me that there was a company called Monard who (*sic*) was jointly owned by Mr. Madigan and Mr. Rea and when I asked what shares of the company the ownership was divided they said it was a 50:50 ownership. They also said this company was formed exclusively to hold the patent between the two of them."

Subsequently he made a few attempts to get an agreement in place. However, it was in Spring of 2001 before there was a business relationship with SytemLink.

He was referred to a letter dated 10th February, 2000, from P.J. O'Driscoll to him which stated that they acted for Harry Rea and Terry Madigan and had been asked to respond to correspondence received from him regarding proposals to bring the SystemZone/SystemLink product to the market.

He was surprised at that letter because, while that lawyer's office was mentioned in the Brook Hotel meeting on 10th January, 2000, it was in the context of his questions regarding the patent, more precisely regarding the patent protection of SystemLink products. During that meeting there was no written evidence, no sufficient written evidence put on the table to show him that the statement by Mr. Rea that the product was under patent protection, that it was actually so. He said he saw no document regarding a patent.

In cross-examination by Mr. Rea he said that one of two of them said to him that "the patent was owned by a company called Monard and we jointly owned it".

He said that there was no question of him having any marketing cooperation with Monard, the proposal was with Mr. Madigan and Mr. Rea.

He said he had asked about patent protection of SystemZone. At that stage he did not know whether the intellectual property was registered in anyone's name. The solicitor's letter of 10th February, 2000, did not mention it.

He said that a year later, Mr. Moran and Mr. Courtney told him that "on the merit of a patent they had formed a company called SystemLink".

He said he had no opinion on whether Mr. Madigan claimed to have a share in Monard, *before* December, 1999. He said there was no mention of Mr. Madigan or Monard on the draft agreement of 16th December, 1999, with himself and Mr. Vaughan.

He said he only became aware of Mr. Madigan at the Brook Hotel meeting on 10th January, 2000. He had no opinion on a later correspondence regarding SystemLink as, at that stage, his relationship with Mr. Rea was fizzling out.

He said in reply to Mr. Rea's question that Monard was only mentioned in the context of who owned the patent.

Mr. Farrelly B.L. for Mr. Madigan intervened to object to Mr. Rea giving evidence in his cross-examination of Dr. Finkenstedt. He said that Mr. Rea had not put it to the witness that neither Mr. Madigan nor Mr. Rea had said that Mr. Madigan had 50% shareholding in Monard.

At the end of Mr. Rea's cross-examination Mr. Farrelly asked Mr. Rea to put the specific question to Dr. Finkenstedt that Mr. Rea did not say that Monard was in any way owned by Terry Madigan.

At that stage Mr. Rea asked the witness if he, Mr. Rea, had told him that Terry Madigan owned 50% of Monard. Dr. Finkenstedt replied: "yes, definitely".

7. Mrs. Maura Madigan
Mrs. Maura Madigan qualified as a solicitor in 1986 and had practised for ten years.

She said she and her husband had met Mr. Rea in 1997. The following year, Mr. Rea approached Mr. Madigan in relation to System Tech Ltd. which had not paid royalties to Monard. Mr. Rea was not in a position to discharge Monard's patent fees and Mr. Madigan agreed with Mr. Rea to pay £6,100.

In September 1999 further fees were due and Mr. Madigan agreed to pay these.

On 27th January, 2000, she was present with her husband and Mr. Rea at a meeting with Mr. Edward O'Leary, solicitor in P.J. O'Driscolls, in Cork. Mr. Rea and Mr. Madigan wanted to form a new company. The main discussion was on SystemLink Ltd. There was also discussion as to whether Mr. Rea should have 51% and Mr. Madigan should have 49% in the new company to avoid deadlock.

Her evidence, denied by Mr. Rea, was that the parties shook hands on a 50/50 shareholding in Monard. Mr. Rea was to arrange the

paper work as he had not paid his accountants.

Mrs. Madigan said that she assumed that Carol Long had executed the share transfer form in favour of Mr. Madigan.

However, the form appeared, as emerged from discovery made on 20th January, 2006, to have been executed by Mr. Rea and backdated to 31st December 1998.

The batch of Companies Registration Office B1 documents and Minutes of Directors and General Meetings that she had seen were in somewhat of a mess.

On 29th May 2001, there was still no share transfer form on the second batch of documents and she executed a new share transfer form which was signed that day.

She said that the issue of a declaration of trust never arose. There were no documents or references to a declaration of trust.

On 22nd March 2000 she drafted the letter signed by Mr. Rea and Mr. Madigan with the understanding that Mr. Rea and Mr. Madigan were equal shareholders in Monard. On the following day Mr. Madigan paid fees to F.F. Gorman, the patent agents on behalf of Monard, in respect of the U.S. patent rights which were granted to Monard on 25th July, 2000.

In September of that year Mr. Madigan organised a meeting with Shay Moran, Peter Courtney and Eamon Heffernan together with Mr. Rea.

She believed that Mr. Madigan had been asked by Mr. Rea to represent the company and had agreed a 6% royalty rate. She understood Mr. Rea and her husband were happy with that rate.

She referred to the Companies Registration Office documents in 2004 and the accompanying letter of 7th January, 2004, which had indicated that Mr. Rea purported to act as the auditor.

Under cross-examination she said that she had not been involved with the business of Coppercraft, or in dealings between Monard and Coppercraft in which her husband had an interest.

While there was no mention in Mr. Madigan's affidavit of 8th July 2004, of her being at that meeting, she said she was there.

She said that the letter of 22nd March 2000 referred to Mr. Rea and Mr. Madigan granting the licence to SystemLink on behalf of Monard. That letter was signed by Mr. Rea.

She was asked why she wrote a formal letter of 29th January 2001, asking for the share transfer form. She replied that it was to enable the accountants to sort the matter out. She was not sure who the transferor was. She said that the share transfer form was signed by Mr. Rea. It was put to her that the form had been tippexed and that the lines had moved. She said she did not know if amendments had been made before or after Mr. Rea signed it. She said she had found the copy in the discovery documents.

It was put to her that she had no experience in drafting patent agreements. She said she had used the System Tech precedent. She said that the licence agreement was not relevant as the patent had already been granted and both Mr. Rea and Mr. Madigan had agreed a 6% royalty plus a sliding matrix if the patent were used in larger systems.

She said that the role of Coppercraft was to keep the patent alive while there were technical improvements being developed to make it more saleable.

8. Mrs. Ann Rea
Mrs. Ann Rea, in evidence said that both Mr. Rea and Mr. Madigan had 50%. She said that she had had one ordinary share. She said that she had been a director of Monard.

Under cross-examination she said she did not know what an ordinary share was but that Carol Long had a share in trust for her. She said she had seen in a document which showed that she had one share. She said she did not remember giving a share to Carol Long but that several documents indicated that she had done so.

Mrs. Rea said that she did not attend an Annual General Meeting of Monard on 21st December, 1998 nor was there a directors' meeting held the following day.

9. Peter Courtney
Mr. Courtney, chartered accountant, had trained with Cooper Bros. and PwC and had been head of mergers and acquisitions in Eircom before he met Mr. Rea.

In late 2000 as the imminent mergers and acquisitions activity in Eircom was winding down, he and Shay Moran examined of a number of different projects including a plumbing control invention with which Mr. Madigan was involved.

The first meeting was in Mr. Madigan's house in November/December, 2000 with Mr. Madigan, Mr. Rea, Mr. Moran and Mr. Eamon Heffernan. They examined the SystemZone product.

Zoned Heating Systems Ltd at this stage was distributing the patent and products of Monard. The shareholding in that company was owned as to 50% by Mr. Rea and 50% by Mr. Madigan and his brother. Mr. Madigan's brother later ceased to be involved.

Mr. Madigan had a 50% shareholding in Coppercraft which for a time previously had acted as agent for Monard and Mr. Rea was involved with Optiflex which was a plumbing consultancy company with a number of product agencies.

Mr. Heffernan's company, AON Systems Ltd, was a building management system for controlling heating equipment in large buildings with computerised control.

Mr. Courtney said that he asked who owned Monard and was told by Mr. Madigan that it was 50/50 between himself and Mr. Rea. He said he found this a little unusual. He believed that Mr. Rea as the inventor should have had the majority stake. Mr. Madigan told him that initially Mr. Madigan had a 40% stake but that he had paid further monies into the company and the stake was increased to 50%. He said that Mr. Rea was sitting beside Mr. Madigan.

Mr. Courtney asked Mr. Rea if he were happy to have a 50:50 arrangement and Mr. Rea confirmed to him that he was. It was important to Mr. Moran and himself that Mr. Madigan was a 50% shareholder in Monard as they were doing business with friends.

At the meeting in late 2000 they discussed the development of SystemLink's share structure. While Mr. Rea had a copy of the SystemLink share structure he said that he would prefer to use what he termed "an authentic version" rather than a created document which he believed to have been fabricated to support Mr. Courtney. He said that a copy had been exhibited in Mr. Madigan's affidavit two or three years beforehand but gave a completely false impression.

The document headed "SystemLink Share Structure" was part of the plaintiff's book of discovery and the Court allowed the document in evidence.

Mr. Courtney described it as a capital table which showed how the parties and Mr. Heffernan started from a position of being equal one third shareholders. It then altered the share structure when Mr. Moran and Mr. Courtney committed to a funding of £100,000 each before Enterprise Ireland and private investors committed themselves to the project.

Mr. Heffernan did not subsequently take part and, accordingly, both parties had one share each.

Mr. Courtney described the actual history of shareholding where Mr. Moran had invested £143,000 and Enterprise Ireland agreed to invest €200,000 on the basis of a pre-cash valuation of €4 million. A further subordinated loan of €150,000 was funded by Mr. Moran, Mr. Madigan and Mr. Courtney.

There was a further investment by way of rights issue, in February, 2004. Mr. Madigan invested a further sum of €113,000, together with €56,000 in May 2004.

Mr. Rea prefaced his cross-examination, by saying that he had no intention of looking at "that fictitious document" and asked Mr. Courtney to deal with his, Mr. Rea's, exhibits. Mr. Rea asked Mr. Courtney to deal with a letter which Mr. Moran sent to Mr. Rea on 18th December, 2003. Mr. Rea said there was a book created which was used to "cajole" Enterprise Ireland to support SystemLink. The reference was to the Hazel Hotel, Monasterevin meeting of 21st December, 2001. That hotel had incorporated the SystemZone process. Mr. Rea referred to the shareholding of Mr. Heffernan.

Mr. Courtney replied by referring to the first meeting of SystemLink Ltd. which took place on 10th April, 2001 where Mr. Madigan and Mr. Rea were present with Mr. Moran and himself. At that meeting Mr. Rea resigned as director and he, Mr. Courtney, and Mr. Moran were appointed directors and Mr. Courtney was appointed secretary. At that meeting Mr. Rea agreed that Mr. Madigan would represent his interests because he was a 50% shareholder in Monard and was a good friend.

Mr. Rea insisted that Mr. Heffernan was a one third shareholder with himself and Mr. Madigan in SystemLink. Mr. Courtney said he was talking about one of a series of business plans which were produced for SystemLink and which were shown to tentative investors including Enterprise Ireland.

Mr. Rea asked what amount Mr. Moran had invested in SystemLink. Mr. Courtney said that Mr. Moran had invested £143,000 (€181,573) and that he himself had invested €97,000. Mr. Courtney said that on 10th April, 2001 both he and Mr. Moran had arranged a facility of €100,000 to be made available to SystemLink and guaranteed that sum.

Mr. Courtney said that the reference to 10% royalty rate was in the context of both the licensor and licensee being owned equally by Mr. Rea and Mr. Madigan. That was not a market rate. It was agreed between Mr. Madigan, on behalf of Monard, and the board of SystemLink that the rate would be 6%.

Mr. Rea put it to Mr. Courtney that the agreement was on the basis of Mr. Heffernan having a one third share. Mr. Courtney agreed that the research and development plans did refer to Mr. Heffernan's intelligent plumbing products. Mr. Courtney said that a commercial agreement of share in SystemLink in exchange for shares in his company was ultimately offered to Mr. Heffernan who declined to go ahead with it and wished SystemLink well. Mr. Heffernan had up to then been employed by SystemLink Ltd.

Mr. Courtney said that the document entitled "Harry's deal" was a combination of salary and expenses. His evidence was that Mr. Rea was paid more than €60,000 and that all the information required by Mr. Rea had been given to Eric Cotter acting on his behalf.

"Harry's deal" involved SystemLink paying royalties to a trust company on behalf of Mr. Rea. Mr. Courtney said he did not have personal knowledge of any such trust arrangement: his suspicion was that Mr. Rea was trying to hide income from his wife.

As financial director of SystemLink, Mr. Courtney was concerned with Mr. Rea's requests for information when he was dealing with Mr. Tangley of Kental Teoranta with a view to licensing Mr. Tangley's company.

Mr. Rea in cross-examination asked how a company, even with two shareholders, could unilaterally make an agreement with a third party and not involve a 50% shareholder who was the chairman of the company.

Mr. Courtney replied that the two shareholders in Monard were also the two shareholders in SystemLink. He and the other investors had made the investment in the latter company on the basis of the oral agreement for the licence. That created the value in the company.

Mr. Rea had, by his actions, agreed with that and took employment with and developed SystemLink.

There was an agreement that royalties be accrued until SystemLink was in a position to pay at the end of 2003. Royalties so accumulated were lodged in court. They were shown as liabilities in the accounts.

A letter of 16th December, 2003, from SystemTech to Mr. Rea as director of Monard referred to the payment.

Mr. Cotter of Vaughan's wrote on 21st November, 2003, stating that the patent agreement with Monard for use of its products "needs to be finalised".

Mr. Rea's last question put it to Mr. Courtney that Mr. Heffernan's evidence would be that he did not hear the reference to 50/50 shareholding in Monard. Mr. Courtney confirmed that Mr. Madigan had told him that Monard was owned by Mr. Rea and by him.

Mr. Rea's lengthy cross-examination concentrated on the shareholding, funding and business of SystemLink and related companies rather than on the shareholding of Monard. Mr. Courtney's evidence in chief comprised 18 questions relating to the latter issue. Mr. Rea's cross-examination consisted of 310 questions – many of them lengthy and some giving rather than eliciting evidence. The Court, mindful of the s. 205 element of the case, allowed questions on the licence heads of agreement and royalty payments due by SystemLink to Monard. The Court and Mr. Farrelly, B.L. reminded Mr. Rea of the central issue of the shareholding in Monard but Mr. Rea avoided challenging Mr. Courtney on his evidence that Mr. Madigan was a 50% shareholder in Monard.

10. Mr. Shay Moran

10.1 Mr. Moran described himself as an entrepreneur with a Master Degree in business from T.C.D. with 35 to 40 years experience in buying and selling over a dozen companies. He got involved in SystemLink in 2001 and is the managing director of that company.

He said he was introduced to Enterprise Ireland in January 2001 by Mr. Rea with regard to grant aid. Later that year he had a meeting with Martin Doyle and another person from Enterprise Ireland with Mr. Rea, Mr. Madigan, Mr. Courtney and himself. They completed a business plan which was signed by Mr. Rea.

He said that Mr. Eamon Heffernan had an involvement with Mr. Rea and worked in the same office in Cork. Mr. Rea's company was AON Solutions and was quite a different solution to the simple plumbing device that Mr. Rea had invented. Mr. Heffernan sold through mechanical and electrical contractors, architects and consultants while SystemZone was sold through the plumbing network. The idea was there was a fit between the two companies and that they should combine together to present a unified solution to the market. He believed that they were two distinct businesses. AON required a lot of development money. SystemZone was well established and had a right to the patent.

He referred to SystemLink heads of agreement in September 2001 which involved Mr. Rea, Mr. Courtney, Mr. Madigan, himself and Mr. Heffernan.

Mr. Heffernan did not get a shareholding in this company. Neither Mr. Rea, nor Mr. Madigan, the original shareholders, did not transfer any shares to him. Mr. Moran said that the following April, 2002 he made a commercial arrangement with him and bought his products. He never made a complaint about being no longer involved in SystemLink.

November and December of 2000, he attended a meeting at Mr. Madigan's house where Mr. Heffernan was present. His concern was that the SystemLink products were protected and he was told by Mr. Rea and Mr. Madigan that they had signed an agreement giving the rights to manufacture and promote the product on a global basis to SystemLink.

He was happy with the evidence that he had of a letter of 22nd March, 2000 signed by both Mr. Rea and Mr. Madigan regarding their understanding of their agreement and that "SystemLink Ltd will have the sole and exclusive right to develop the market for SystemZone and SystemLink products". That was the basis on which Mr. Moran said he invested €181,000 and he went forward with SystemLink on that basis.

He said that "Harry's Deal" included a statement that "royalties go to trust companies set up by Harry". Mr. Moran said the reason that Mr. Rea had given was that he was separating from his wife and he wanted to hide the money because he had to pay maintenance.

The same document provided that "Terry M. to represent Harry's interest on the Board". Mr. Moran said that Mr. Rea stated to him that he did not want his wife to know that he was a director of a company. He said that subsequently Mr. Madigan did represent Mr. Rea's interest and he did negotiate patent agreements with himself and with Mr. Courtney on behalf of Monard.

Mr. Moran said that he did not start full time in the company until April 2002 putting sales people on the ground and employing an agent in Holland and a salesman in the United Kingdom. They employed an export sales manager and two sales people in Ireland.

They realised that they had to get the patent agreement which was prepared by BCM Hanby Wallace on 10th October, signed. He only dealt with Mr. Madigan in relation to Monard.

He said he negotiated a deal with Enterprise Ireland at a valuation of €4 million. Mr. Rea, Mr. Moran and Mr. Madigan held 22.7% of each of the shares in SystemLink.

He referred to the end of 2003 and said that in the previous summer of 2003 he was introduced to Jim Tangley who owned a company called Kental which manufactured geothermal heat pumps. Both of them saw that there could be an opportunity to put the two businesses together. He and Mr. Courtney did due diligence on Kental and Mr. Tangley employed Gail Ellis of Roberts & Co. to examine SystemLink. The deal did not go through but, as a result of the due diligence they did in Kental, they decided against the deal. He said that Gail Ellis said that she had seen a major anomaly in the expense account but that this was because she had taken sixteen months expenses as being for seven months.

Subsequently Mr. Rea needed information for his family law case and Gail Ellis had sought this information for him. He thought that it was clear that that information had nothing to do with the family law case as they looked for P35 reports of the fifteen or eighteen employees in SystemLink. Kental went into liquidation on 1st October.

They did not want to fall out with Mr. Rea. They had received money from Enterprise Ireland and they told Mr. Rea that they would get an independent auditor and pay for an investigation into SystemLink. They agreed that Mr. Eric Cotter would complete the report. Mr. Cotter circulated the report to Mr. Rea before giving SystemLink the opportunity to discuss the report. Mr. Moran said he would write out a report based on the way SystemLink felt it should have been and brought that report personally to Mr. Cotter. The report was dated 21st November, 2003 and there was a meeting on 28th November, 2003 at the Silver Springs Hotel. Mr. Cotter had been trying to bring Mr. Rea back on side. He wrote a note; it was discovered, on the 2nd December 2003 when he had met Mr. Rea for lunch. The note stated:

> "… one qualm. Not happy that Terry owns 50% of Monard. He was fine about SystemLink. He will pay everything once Monard is sorted. He is disputing 50% of Monard. James Terry is holding it in trust. That is where we are at."

Mr. Moran said that that was a contemporaneous note of a telephone conversation with Mr. Cotter.

Draft letter dated 3rd December from Mr. Moran to Mr. Cotter stated:

> "What Mr. Rea fails to understand is that he owns 22% of the company that was valued at the last capital injection at €4.2 million. He receives an above average salary. He is a 50% shareholder in a royalty receiving company and he works with decent people.
>
> He has thrown all this or most of this away. I find it unbelievable in all his years I cannot believe he has ever been as well off. What more does he want?"

Mr. Moran did not know whether this draft was sent or not.

Further notes of Mr. Moran refer to a telephone conversation with Eric Cotter who is reported to have said that the shareholding "comes down to whether the name is on the share register and Harry has the share register. The issue is not Harry not wanting to sign with SystemLink".

Mr. Moran said that the shareholding referred to was the shareholding in Monard.

He referred to a note he had written in relation to a telephone conversation with Ciaran Johnson, dated 11th December, 2003. Mr. Johnson, solicitor with BCM Hanby Wallace, was acting for SystemLink. Mr. Johnson, he noted, had said that it was a matter for the court to look for documents. "The share transfer was executed. Both Mr. and Mrs. Madigan said they signed a share transfer and handed it over. Mr. Rea was obliged to register it and put it in the annual returns….procedural items were not properly executed. The judge can rule …the accountants were negligent."

Mr. Moran said there was no mention of a declaration of trust. Mr. Cotter never said that he had prepared a letter of trust.

Mr. Moran said that, after inviting Eric Cotter to complete a report, he attempted to explain to Mr. Rea that there was no animosity, that they wanted him to stay in SystemLink and they arranged a meeting in Rochestown Hotel. Mr. Madigan brought the final edition of the patent agreement between Monard and SystemLink for Mr. Rea to sign but he refused to do so. He said he agreed that SystemLink had an interim agreement. But if SystemLink wanted to continue working with Monard a new agreement would have to be signed which would be drawn up by him and presented to SystemLink. Mr. Moran said that that never happened.

He said that Mr. Madigan had asked Mr. Rea what type of shareholding Mr. Rea thought that he had. Mr. Rea said it was just like a company formation type (of shareholder).

To his recollection Mr. Cotter never commented about the ownership of shares in Monard.

He said that Mr. Rea had been in the United Kingdom on company time. He understood he was engaged in some consultancy in his own name. Mr. Moran said he waived a £50,000 Stg cheque at SystemLink sales manager. He left the SystemLink telephone on a British rail train between London and Birmingham which was returned to SystemLink. On that mobile phone there was the following message:

> "Eric, I have agreed the deal with Jim Tangley, re, Monard dated the 6th December, 2003."

Mr. Moran believed that he was intending to establish a company and take the rights away from SystemLink.

He said that Mr. Rea frustrated SystemLink in every way by confusing his duties as an employee of SystemLink with his responsibilities as a director of Monard. He told SystemLink that he was withdrawing the right to manufacture and market the product from SystemLink without any notice. Mr. Rea was stressed and sent in numerous sick notes quoting stress. Mr. Moran had difficulty getting him to deal with customers. Eventually Mr. Rea walked out of the company on 28th of February, 2004 and left SystemLink bereft of technical support without any notice.

SystemLink wrote to him on 16th December, 2003 and on 26th February, 2004 saying that they were still awaiting a response as to the bank account into which royalty payments were to be made.

SystemLink then had a rights issue for €500,000 and felt it was prudent to start paying royalties to Monard out of the €300,000 raised in the first tranche. A further letter of 8th March directed to Mr. Rea and copied to Mr. Madigan suggested that the royalty payments be made to a joint account.

10.2 In cross-examination he totally disagreed with so much that Mr. Moran had said that Mr. Heffernan would be giving evidence the following day. He asked why Mr. Moran had maintained that Mr. Heffernan had nothing to do with the start up of SystemLink. Mr. Moran replied that he did not say that. Mr. Moran said that Mr. Rea and Mr. Madigan owned the shares and it was up to either of them to give Mr. Heffernan a third share.

Mr. Rea said that the letter of 18th December, 2003 referred to Mr. Madigan, Mr. Rea and Mr. Heffernan being shareholders at incorporation. Mr. Moran said that Mr. Heffernan had an important role to play. Mr. Rea put it to him that Mr. Heffernan appeared on the company register as a 33% shareholder. Mr. Moran said he did not know. The letter of 18th December was referred to have proposed a structure. He said that Mr. Heffernan's company AON was not mentioned to Enterprise Ireland and had no part in SystemLink. AON were gone from 1st or 2nd of April 2002. The business plan was submitted to Enterprise Ireland in September and in July 2003 SystemLink received €200,000 based on a shareholders agreement that Mr. Rea and all of the other shareholders in SystemLink signed up to. To suggest that Mr. Rea was not involved in the Enterprise Ireland document or was not aware that SystemLink was developing a business plan beggared belief. Mr. Rea had worked for and was paid by SystemLink for three years and travelled with Mr. Moran to get customers in Italy and in England. He created technical, service and sales literature which was shown to Enterprise Ireland.

Mr. Rea referred to the document with Enterprise Ireland and said that there was just one signature page which was signed by him. Mr. Rea referred to an email dated 5th February 2010 which he received from Enterprise Ireland concerning the signed document between Enterprise Ireland and SystemLink which was sent to Enterprise Ireland on 18th December, 2007. The email referred to a further copy of the executed version of the agreement for Mr. Rea's records and confirmed that it was a true copy of the executed version in that the seal of Enterprise Ireland and of SystemLink were fixed to the signature page. It was confirmed that the attached copy included all pages contained in the agreement and that there was no counter-parts clause contained in the agreement. Mr. Rea put it to Mr. Moran that he had removed the name of the courier who had brought the document so that he could not be identified. The document was never read and Mr. Moran was suggesting that he, Mr. Rea, had full knowledge. He said that the document that was presented into evidence was a forged document and that the courier's name had been removed.

Mr. Rea then referred to the licence agreement which was intended to be signed and which he would have signed but not the "joke that was present to him and is now being forced down my throat".

Mr. Madigan referred to the negotiation of the licence agreement and the advice from BCM Hanby Wallace.

Mr. Rea asked whether Mr. Moran had told SystemLink that his company, Doherty Advertising, would be caught for €6 million and would end up in court. The Court asked Mr. Rea what the relevance of that question was. Mr. Moran answered that he was not a shareholder in that company. He had been invited to become a non-executive director by Pascall Taggart which he did. He said he was an investor in a company which raised 6 million in the currency at that time in a dot.com company which did not succeed. He had guaranteed SystemLink with Peter Courtney to the extent of 100,000 in 2001.

The Court remarked that Mr. Rea was making a statement rather than asking a question.

Mr. Rea questioned Mr. Moran on the role of Gail Ellis and of Jim Tangley, whom Mr. Rea regarded as having a number of inventions which could be marketed by SystemLink; referred to some emails with a cartoon character called Gollum. The Court asked Mr. Rea to keep to the point and to ask Mr. Moran questions rather than make statements.

Mr. Rea said that Mr. Tangley's company was going down the drain waiting for him to make a decision and that that made him, Mr. Rea, extremely annoyed with the management of SystemLink.

Mr. Moran agreed that Mr. Rea had become annoyed because Jim Tangley did not become part of SystemLink. His duty was to his shareholders which included Mr. Rea, to get the best deal for SystemLink. He had subsequently discovered that Mr. Tangley also had a patent royalty company in which there were two shareholders.

Mr. Rea referred to Eric Cotter's report. Mr. Moran said that it was Mr. Madigan who had recommended Mr. Cotter and he accepted him. He said that he found it necessary to contact Mr. Cotter once he had made his report on 21st November, 2003. Mr. Moran said that it was not correct that Mr. Cotter had said that he had taken a large increase in salary. He had not taken a large increase, he had taken a reduction.

Mr. Moran believed that the reason that Mr. Rea did not sign the agreement between Monard and SystemLink was because he wanted Monard sorted out first but accepted that there was an interim licence with SystemLink. Mr. Rea asked a number of questions "off the record" in relation to the previous distributor, Zoned Heating.

The Court intervened to say that the witness had already answered some of the questions that were put to him and asked that questions which were relevant be put to Mr. Moran.

Mr. Rea continued to ask Mr. Moran about Zoned Heating Systems being run from SystemLink's office, references made to royalty expenses but not to "Terry Madigan royalty expenses". Mr. Moran said he did not know the answer. Mr. Moran said that Zoned Heating Ltd had not been incorporated into SystemLink as appeared from an affidavit of Mr. Madigan. That matter had not been put to Mr. Madigan in cross-examination.

Mr. Moran said that a separate company had been set up to take care of marketing which was SystemLink.

Mr. Rea continued to make statements in relation to Zoned Heating Systems and SystemLink rather than asking Mr. Moran questions.

Counsel for the plaintiff pointed out that Mr. Moran had not met any of the shareholders at that time and did not meet them for a subsequent nine months. He said that Mr. Rea needed to cross-examine Mr. Moran on issues that were relevant to Mr. Moran. He pointed out that for the entire trial there had been an absolute wilful refusal to put the appropriate questions to the appropriate witnesses and not to cross-examine them about matters that they knew nothing about. The defendant had witness statements for seven or eight months before the trial and he knew precisely what evidence each witness was going to give.

The Court told Mr. Rea that there was no need to repeat what he had said. He was putting matters to Mr. Moran which Mr. Moran was not in a position to deal with.

Mr. Rea stated that Mr. Moran had confirmed that the plaintiff's affidavit was incorrect and that Zoned Heating Systems was not incorporated into SystemLink.

Mr. Moran said that there was no doubt in his mind or in the mind of anyone involved in SystemLink who invested money in it, that the letter which they relied upon in good faith was signed by Mr. Rea and Mr. Madigan. The investors had put in collectively €2.6 million and asked whether it was reasonable to believe that they would have done so in a company that had absolutely no asset, no business, no security of asset and which could be taken away at the whim of Mr. Rea. Mr. Rea said that the witness was making a statement and that his question was about Zoned Heating Systems. Mr. Moran said that there had been a reconciliation of monies going in and out between Zoned Heating Systems and SystemLink.

Mr. Rea referred back to the issue of share transfer between Mr. Rea and Mr. Madigan in 2000 and asked Mr. Moran, who had not been involved with SystemLink at that time to explain. He said that he had not specifically heard Mr. Madigan telling Mr. Courtney that Monard was owned on a 50/50 basis. He did not recall hearing it. He did not say that it did not happen. He was more concerned with protecting the company in which he was about to invest and received the letter signed by Harry Rea and Terry Madigan two days later. He said that if Mr. Courtney had said it happened he was sure that it did.

Mr. Rea put it to him that his witness statement had said that "we were advised that Monard currently owned the patents and that it was owned 50/50 by Harry Rea and Terry Madigan". Harry Rea and Terry Madigan agreed.

Mr. Rea then asked about the £50,000 Stg cheque which Mr. Moran had referred to and said that SystemLink discovered that the cheque did not come from consultancy but might come from the sale of Mr. Rea's mother house in England or something like that but that nothing hung on it – it was irrelevant.

Mr. Moran said that he had not threatened Mr. Rea in relation to Mrs. Rea nor had he referred to Mr. Madigan as being CEO and Chairman of Monard. The Court reminded Mr. Rea that these matters should have been put to Mr. Madigan and that he had to keep the cross-examination as objective as possible.

11. Defendant's evidence

11.1 Much of Mr. Rea's oral evidence reflected what was already contained in the extensive affidavits grounding his motions. Further evidence had been given as a preliminary to his questions in cross-examination of the plaintiff's witnesses and added to, extensively, under oath, in the witness box. The Court made some allowances in respect of his position as a lay litigant in relation to the repetition and overlap.

The Court, while not conceding that he was entitled to represent the company, which he could not, having regard to *Battle v. Irish Art* made concessions with regard to his evidence on behalf of Monard in the Section 205 application on the basis that there was no formal opposition from counsel of the plaintiff in that regard.

Mr. Rea asserted that he is the sole owner of all ordinary shares in Monard and asserted his entitlement to act on behalf of Monard. He submitted that the first issue to be determined was whether the plaintiff was entitled to be registered as a shareholder in the company.

11.2 He believed that there was a contradiction in Mr. Madigan's evidence in relation to the transfer. He had claimed that the sum of money for the upkeep of Monard's patents was in return for a transfer by Mr. Rea of part of the latter's shareholding in Monard; that Mr. Madigan furnished Mr. Rea with the share transfer form on 29th January 2001, and that on 29th May 2001, that form was signed by Mr. Rea and returned to Mr. Madigan.

Mr. Rea disputed the evidence of Mr. Madigan that the bundle of documentation included a share transfer form. He had never seen the form until it had been exhibited in Mr. Madigan's affidavit of 8th July 2004. While he acknowledged that the signature appeared to be his, he denied signing it.

While Mr. Madigan maintained that Mr. Rea signed this second transfer form which was exhibited to the Court, Mr. Rea's evidence was that the directors of Monard did not register either of the forms for the share transfer. Mr. Rea referred to the annual returns and B1 forms, which show Mr. Rea as a shareholder.

Mr. Rea says there were also contradictions in the plaintiff's evidence such as in relation to the meetings with Mr. Edward O'Leary of P.J. O'Driscoll, solicitors and the agreement made in the railway station in Cork.

Mr. Rea referred to interim agreements with previous distributors, Coppercraft and Zoned Heating Systems, regarding a patent licence agreement with Monard. System Tech Ltd. was expected to pay third party costs of initial patent applications. His evidence was that, on 17th February, 1998, Mr. Madigan had told him that it would be simpler for him to pay the £6,100 from his personal account and reclaim it later from the company.

In late February 1998, Zoned Heating Systems was incorporated to allow Mr. Rea to hold a one-third share in the sales company. Zoned Heating Systems was to begin trading immediately. Unbeknownst to Mr. Rea, it did not actually trade. Mr. Rea said that very significant purchase and sales were not accounted for in payments received by a company called Firebird Ltd. These were not shown on the bank statements. Mr. Rea said that he had no idea how much was actually passing through the various related companies as he was never shown the data and believed that Zoned Heating Systems was trading.

He referred to what he called another example of invalid bookkeeping in respect of Monard's accounts of 19th May, 1999, which did not show an amount of royalty payments paid by Coppercraft Ltd. Royalties at 10% were paid to Monard in the sum of £15,561.72 which would equate to sales of ten times that figure for the period February 1998 to November 1999. Mr. Rea referred to a meeting at the offices of Coppercraft on March 22nd 2000, concerning what he regarded as dismal sale figures. Mr. Rea said that he trusted Mr. Madigan and believed that all the sales data would be made available. Mr. Rea said that Mr. Madigan and the parties had signed a letter committing to improved sales and marketing performance by Coppercraft which provided that Coppercraft as patentee would pay renewal fees and that they would set up sales and marketing companies.

Mr. Rea said that a patent licence agreement was drafted but never agreed as terms were changed from what was acceptable to Monard. He clearly understood that, if the patent licence agreement between the companies was not in existence, then Monard could not have the tax free benefits it was entitled to or the protection of the intellectual property of its patents.

There was no mention of Monard's shareholding in that letter of 22nd March 2000. Mr. Rea's position was that the word "we" referred to the marketing companies and not to Monard.

Mr. Rea maintained that what purported to be his signature on the share transfer form was not his. He said that he had complained to the Director of Corporate Enforcement and the gardaí. No reference was made to correspondence in relation to these complaints.

Mr. Rea, by letter dated 16th December 2003, wrote to Mr. Madigan, regarding the share ownership (which letter was copied to the company's accountants, John P. Vaughan & Co.). That letter stated, *inter alia*, as follows:

> "It has been brought to my attention that you're representing yourself as a 50% shareholder of Monard Research & Development Ltd. As you will know, this is not the case. You were never a shareholder in Monard Research & Development Ltd. with the only offer ever made to you in that regard was when you were to agree to hold a share temporarily based on your signing of a 'letter of trust' in favour of myself. You will fully understand that because you never signed that letter of trust the share was never transferred to you."

Mr. Rea wrote to Mr. Madigan on 16th March, 2004, to say that his directorship of Monard had expired on 9th September, 2002 as per the company's resolution dated 22nd December, 1998. The letter also denied that Mr. Madigan ever had a shareholding in Monard and threatened legal action.

Mr. Rea maintained that each of the plaintiff's witnesses stood to gain financially if there had been a franchise agreement with the exception of Dr. Finkenstedt. He believed that the evidence of those witnesses was at variance with the facts presented to the Court.

The evidence of Dr. Finkenstedt of the meeting of 10th January, 2000, was that "one of you gentlemen told me that Monard owns the I.P. and Monard is owned 50/50 by Harry and Terry". Mr. Rea said he had told Dr. Finkenstedt that he was the sole owner of the company. He said that the latter's interest was market based and the answers given were market-oriented.

Mr. Rea submitted that Mrs. Rea did not know there were only two shares in Monard. Her evidence that Mr. Rea owned one and that she believed that both Mr. Madigan and herself each owned the other was an impossibility.

Mr. Rea believed that Mr. Madigan orchestrated her involvement by contacting her after she had separated from Mr. Rea.

In cross-examination, Mr. Rea agreed that he had signed the CRO returns which listed Mr. Madigan as a shareholder. If that were true he could only "put his hands up and admit his error". He said that it was for the Court to decide whether a share transfer in conformity with the Companies Act had, in fact, taken place.

Mr. Rea referred to a letter from Ernst & Young on 12th December, 2003, which state, *inter alia*:

> "A stock transfer form effective 31st December, 1998 from Harry Rea to Terry Madigan was included in the documentation provided. However, as it has not been duly stamped by the Revenue Commissioners, an entry has not been made into the statutory registry register section 81."

The evidence of a text message from James Tangley to Mr. Rea regarding an agreement between Monard and Kental Teoranta on 6th December, 2003, was not controverted by Mr. Rea.

The message from Mr. Rea to Mr. Cotter stated "Eric. I have agreed to deal with J. Tangley and Monard to be finalised asap."

12. Mr. Cotter's evidence

Eric Cotter was the accountant for Monard following the events of late 2003. Mr. Cotter had worked with Vaughan and Co. and was the former accountant for Monard. He gave evidence of having prepared a declaration of trust for Mr. Rea but could not say that the draft was made before the end of 2003. He did not remember actually sending a draft to Mr. Madigan. He did not deny the evidence that Mr. Cotter had told Mr. Madigan on 18th December, 2003, that there was no verbal or trust document in existence.

13. Mr. Edward Clibborn

Mr. Edward Clibborn, accountant, had formed Monard on 22nd January, 1993, when its two shares were owned by Optiflex.

By meeting of the Board of Directors on 13th July, 1995, the two voting shares were transferred to Mr. Rea for £100. Carol Long, an employee of Mr. Clibborn, held one share under a declaration of trust dated 13th July, 1995, together with a signed share transfer form. Mr. Clibborn said that he had the share register at the time but did not now have it.

The share held in trust by Ms. Long was transferred to Mrs. Rea on 30th October 1998. Mr. Clibborn later advised Mr. Rea to file corrected form B1 if necessary.

In cross-examination, Mr. Clibborn said that Mrs. Rea was included as shareholder in the B1s and that Mr. Rea wanted her to be removed. A declaration of trust would authorise the transferor to complete the blank transfer in any way the transferor thought fit.

Mr. Clibborn retired from practice as an accountant in 2001 and 2002. He incorporated Monard on 23rd January, 1993, when the shares of the company were owned by Optiflex. He confirmed that Mr. Rea was involved at that stage with Eamonn Heffernan and Trevor Cronin in relation to a patent for a different product called Aquadial. They let the patent lapse.

The company was incorporated with two ordinary shares held by Optiflex. There were four different classes of A, B, C and D shares which were non-voting, non-participating. The company was always controlled by the two Optiflex shares. The purpose of the A, B, C and D shares were under tax legislation to pay out patent dividends free of income tax to shareholders. It was the standard patent type of structure.

At a meeting of the board of directors on 13th July, 1995, Optiflex shares were sold to Harry Rea for the sum of £100. Carol Long held one share under a declaration of trust dated 13th July, 1995.

He referred Mr. Clibborn to his letter dated 19th December, 2000, which recorded that:

> "You showed me the original signed declaration of trust and signed, unstamped, transfer form also dated 13th July, 1995."

He said that he contacted Carol Long who said she had no recollection whatsoever of transferring the nominee share which was in her name. He held the share register at the time, but did not know where it was now. The B1s evidence that the share held by Carol Long, as nominee, was, in fact, transferred to Anne Rea on 30th October, 1998.

He said he remembered Mr. Rea asking him if he had the share register. He certainly did not have it. He said he could try to write another one from whatever evidence was available. He had advised that if Mr. Rea felt that the information was incorrect, he could file corrective B1s.

In cross-examination, Mr. Farrelly referred to Mr. Clibborn's letter which concluded that he strongly suggested that Mr. Rea should formally request his agents to produce the documentation on which they relied as evidence that the share held by Carol Long, as nominee, was transferred to Anne on 30th October, 1998, and to file them under returns made up to the same dates for 1998 and 1999. He agreed that, on the B1s, Ms. Anne Rea was a shareholder and agreed that Mr. Rea contacted him with a view to having that rectified and her removed from the register. He did not recall why it became an issue in December 2000.

Mr. Clibborn could not answer Mr. Rea's questions with regard to what would happen if someone modified the form for some other transaction, whether the signature would be valid.

14. Eamon Heffernan
Mr. Rea asked Mr. Heffernan to give evidence on the work they did together before Systemlink, Zoned Heating Systems or Terry Madigan came on the scene. Mr. Heffernan referred to the mechanical aspects of control of zones and the electric controls needed to solve the problem of managing a building.

Monard originally came in with Trevor Cronin, Mr. Rea and Mr. Clibborn on the product which was to save energy and hot water for heating. Monard was the patent holding company and Optiflex was the business trading company. He thought they had worked on the project for eighteen months and the decided that they would not pursue it any further. They handed over the shares and everything else to Mr. Rea at that point.

He agreed that that was when Carol Long came in. He was aware of Mr. Madigan becoming involved. Mr. Rea had been dealing with Mr. Madigan as a distributor for the Zone Heating System. Mr. Heffernan said he had no involvement in Mr. Rea's company at that stage. They were completely separate. At that stage, the patent was a provisional trading patent. Mr. Heffernan said that they had installed the system in a number of high quality customers and then approached Enterprise Ireland with a view to getting support for both of their products.

At that stage, Mr. Heffernan said they were working with Mr. Madigan who was interested in becoming a party as a distributor. SystemLink was a product that amalgamated electronic and mechanical elements. He said that they met in Mr. Madigan's house after being at Enterprise Ireland. Mr. Madigan suggested that they run the deal by Shay Moran to assess the project.

Mr. Heffernan said he had no recollection of Mr. Courtney being told by Mr. Madigan and Mr. Rea that they owned Monard. The only person that Mr. Heffernan was aware of that owned Monard and Optiflex was Mr. Rea, and possibly, his wife. When he and Mr. Clibborn and Mr. Cronin left, the ownership of Monard was transferred to Mr. Rea. That was the company that was used for the patent. To his knowledge, the patent, basically, belonged to Monard which belonged to Mr. Rea. Later, the meeting in the hotel in Monasterevin dealt with the new company, SystemLink, with which Mr. Heffernan worked but did not bring AON Systems into SystemLink. Mr. Heffernan said that he still had ten non-voting shares in Monard which he regarded as a treasure chest for his children.

He said that Shay Moran and Peter Courtney had been running a very successful project, a large-scale project, and could either invest a lot of money themselves or source of a lot of investment for them.

He said he was not aware of Doherty Advertising. He believed that Mr. Moran and Mr. Courtney were white knights.

Mr. Heffernan said he did not recollect Mr. Rea telling him anything about dealings with Mr. Madigan. He said he would be surprised if he had sold shares in Monard. He thought it would be strange if Mr. Rea was selling the patent for €3,000. He would find it difficult to put a value on the development but it would be a substantial amount of money in excess of €1,000 to €300,000.

Mr. Rea referred to the detail of the innovation of the patent.

In cross-examination by Mr. Farrelly for the plaintiff, Mr. Heffernan said that Mr. Rea never approached him to fund the upkeep of the Monard patent and he did not contribute. He did not recall whether Terry Madigan had given Mr. Rea money to fund the patent upkeep. He did not recall attending the meeting on 27th January, 2000, with Edmund O'Leary of P.J. Driscoll, solicitors, nor was he aware that SystemLink was set up on 2nd March, 2000. He was not aware that he was not a shareholder.

He agreed that SystemLink was going to do what Zoned Heating Systems did and amalgamate the business of Mr. Rea, Optilex and Mr. Heffernan's AON Systems Ltd., with effect from 1st April, 2001. He agreed that this not go ahead. He agreed that Mr. Moran brought in £143,000 and that Mr. Courtney brought in £56,000, both in cash. Mr. Madigan had the distributorship; he had the market. He did not agree that Mr. Madigan was essentially getting a free ride as he had a successful company at the time and was selling a product already. He had access to the market and was well known in the business. They were hoping he would bring a lot of business their way.

He was not aware of an agreement that Mr. Madigan had a half of Monard. He was referred to a meeting of 21st September, 2001, the Monasterevin meeting. He was installing a system at the time in Newcastle West and got a call from Shay Moran to say he was going to drop Mr. Heffernan's shareholding to ten per cent. He was very offended.

He agreed that he had sent an email in March 2002, thanking SystemLink for putting their thoughts on paper, and decided that the agreement, as proposed, was not in the best interest of AON Systems Ltd., and wished SystemLink and all the parties thereto the very best of luck. He was quite happy to leave the company and it was amicable.

He agreed that at the meeting with Mr. Moran, Mr. Courtney and Mr. Madigan, in December 2000, he was not asked if he owned any of the Intellectual Property. The parties knew that he owned AON Systems. The discussion was more on the products themselves rather than about who owned what.

He said he had met with Dr. Finkenstedt in January 2000. He subsequently became aware that he was not a $33^{1/3}$% shareholder in SystemLink.

Mr. Rea, in further examination, referred to the proposal that he be a third shareholder as from the official minutes. He said that that agreed with his understanding at the time of the incorporation.

There was an understanding that SystemLink would be the vehicle carrying forward the production and sales of the product. There

should have been an agreement between the two companies. The reference to AON Systems granting SystemLink exclusive rights did not happen: there was no agreement ever established. He said that his products which he created were going to be sold through SystemLink and continuous development would happen through SystemLink, rather than separately through AON. There was no formal agreement or no formal transfer of Intellectual Property. He thinks he remembered that they discussed Mr. Moran and Mr. Courtney's share going over 25%. He does not remember any discussion regarding a share option. That did not happen at the Monasterevin meeting.

The court noted that the letter accompanying these Head of Agreement referred to them as minutes of the Monasterevin meeting of 21st September, 2001. The court asked whether there were minutes of the meeting. Mr. Heffernan said he remembered his share dropping to 10%.

He said he did not think Monard was ever mentioned.

Mr. Rea put it to him that Monard had handed over control of its products in March 2000, without a contract, and asked whether Mr. Heffernan was aware of that. He did not remember that coming up at a meeting. Mr. Heffernan said he never had the impression that Monard handed over its products. He also had the impression that Monard was Mr. Rea's company which held the patent. In fact, he did not think that they ever discussed Monard. It was always clear to him that Monard was Mr. Rea's business - it was not in the pot.

15. Decision of the Court
The Court had carefully considered the documentary and oral evidence given over many days by the plaintiff and the defendant and the respective witnesses called by them.

There is no issue of the shareholding in Monard in relation to the agreement between Monard and SystemLink.

The Court is of the view that it is the directors of Monard, both Mr. Rea and Mr. Madigan (there being no dispute in relation to Mr. Rea's directorship), were entitled to bind Monard as part of the ordinary course of business of Monard. Mr. Rea's insistence that, as 100% owner of Monard that it was none of Mr. Madigan's business is misconceived.

Whatever about the view of Mr. Rea that Mr. Madigan's shareholding was "just like the company formations type", he made no case that Mr. Madigan was not a director. There was also no denial that he had relied on Mr. Madigan to deal with the affairs of Monard and did not put in question that he was informed of what Mr. Madigan was doing. His only complaint about Mr. Madigan was his holding himself out to be "chairman" and/or "CEO" of Monard.

On 16th of December, 2003 Mr. Rea wrote to Mr. Moran regarding the minutes of the meeting of 10th December in the following terms:

> "Firstly, I utterly refute your grossly connived record of that meeting and I will be responding to your false misrepresentations of what was said at the meeting when time constraints allow. I am appalled that you took the liberty to present minutes of the meeting yourself when you knew full well that Eric Cotter was invited because of his independence as was verified by your employment of him to provide the report you mentioned in your letter. Had I thought any differently I would have questioned while (*sic*) he was there in the first place. It was clearly his right and his position, being the only independent entity, to provide such minutes and I utterly dispute your effrontery in providing them in such a distorted manner. I also wish to draw your attention to the e-mail I sent on December 10th ..."

The tenor of the letter of 16th December, 2003, was intemperate and unfortunate. It was based on a misconceived belief of Mr. Rea's role in SystemLink.

That letter referred to Mr. Rea not speaking to Mr. Moran or Mr. Madigan until he received clear written and signed understanding from both regarding his total ownership of Monard and its patents.

Mr. Rea concluded as follows:

> "Also, be certain I am amply prepared to reciprocate any underhanded actions that might ensue."

Mr. Rea disagreed with salary increases to directors, to fees being treated as BES investments and holdings with no entitlement to conversion being approved without him being consulted.

He referred to his representative, Gail Ellis's communications not being dealt with effectively and disagreed that Mr. Cotter's report supported SystemLink.

The Court is satisfied that, at that time, Mr. Rea was no longer a director in SystemLink. His shareholding was 22% of an increased capitalised SystemLink. The Court has found no evidence of any agreement with regard to the provision of information to Mr. Rea. He was a minority shareholder who was not a director. Mr. Rea appeared to believe that he was entitled to direct the business of SystemLink, notwithstanding. The Court finds that as shareholder he was not entitled to management information.

The Court now turns to the issue of the entitlement of Mr. Madigan to half of the issued ordinary shares of Monard.

The absence of statutory books and records of Monard; the late returns to the CRO; the puzzling reappearance of Carol Long as shareholder in 2002/3, have not been adequately explained or satisfactorily dealt with in evidence.

Issues regarding SystemLink and previous distribution companies referred to by Mr. Rea are not pertinent to the central issue identified by Mr. Rea in his submissions: whether Mr. Madigan was entitled to be registered as a shareholder in Monard.

This is the central issue to be tried and is dispositive of the litigation.

The Court finds that Mr. Madigan's evidence in relation to the payment of the sum of £6,100 to Mr. Rea, paid by cheque on 17th February 1998, and the payment of three cheques to Monard's patent agents on 23rd March, 9th May, 2000 and 18th January, 2001, was not controverted by Mr. Rea. There was no evidence of any accounts for Monard for any period let alone any accounting evidence of how the later payments on behalf of Monard were treated in its accounts.

The plaintiff's evidence, which the Court accepts, is that he paid £6,100 to the defendant in consideration of the latter's transferring 40 or 50 per cent of shares in Monard, the respondent is the related matter.

The Court has difficulty in accepting the defendant's denial, in the absence of any explanation that there was no agreement to transfer and has further difficulty in accepting the logic that the share transferred by Mr. Rea or by his wife or Carol Long was to be held in trust for Mr. Rea pending his son's majority.

The evidence that the first payment was in consideration of 40% of the shareholding in Monard is consistent with that sum being paid to the defendant. It is less clear that the remaining sums paid on behalf of Monard itself, rather than to Mr. Rea, is consistent with consideration being paid to Mr. Rea. In the absence of proper books of accounts of Monard or, indeed, of any evidence from the defendant who held the books of the company, it is not possible to resolve this concern.

It is significant that the defendant was, at all material times, the secretary of Monard as well as director.

Mrs. Madigan had found the documents of Monard to be confusing. Messrs. Clibborn had advised and reminded the defendant to make timely returns to CRO.

Notwithstanding, the stock transfer form for one of the ordinary shares in Monard is consistent with the agreement that Mr. Madigan would be registered as the holder of the other ordinary share in Monard.

Mr. Madigan said that on 29th May, 2001, Mr. Rea had arrived at his house without the share transfer form furnished to him on 29th January, 2001, and that a second share transfer had been drafted and given to him as secretary of Monard.

The B1 return to the CRO made up to 30th September 1999 showed Mr. Rea and Mrs. Ann Rea as holders each of the two ordinary shares.

The B1 forms made up for the two following years to 30th September 2000 and 2001 showed Mr. Rea and Mr. Madigan as holders each of the shares.

Curiously, the returns for year ending 2002 and 2003 showed Carol Long's share. The returns for 2004 and 2005 showed David Rea as the holder of the second share. Significantly, without any evidence in relation thereto, the 2006 and 2007 returns showed Mr. Rea as holder of the two ordinary shares.

The Court agrees with Mr. Rea that the evidence of Mrs. Rea, who said that she did not know what an ordinary share was, and that she believed that both Mr. Madigan and herself owned the second share, was inconsistent. However, the Court accepts her evidence that she believed that Mr. Madigan was entitled to the other share.

She was, as at 30th September, 1999, the holder of the second share and that Mr. Madigan was, for the following two years, the holder of that share.

Mr. Rea's denial of transferring the second share from either Carol Long or from Mrs. Rea is at odds with his returns to the CRO and in contradiction that the share was transferred in trust for him or for his son.

Mr. Cotter's evidence did not establish a declaration of trust.

The Court has had regard to the difficulty that Mr. Rea experienced in relation to the licensing of a distribution company in the late 1990s and the subsequent difficulties arising in the early 2000s with family litigation.

Mr. Madigan said that Mr. Rea had delegated to him the conduct of the business of Monard in relation to SystemLink. This was not contradicted by Mr. Rea.

The directors of SystemLink negotiated and agreed "Harry's Deal" on 6th June, 2001 which benefited Mr. Rea. Both parties had, on 2nd March, 2000, been originally equal shareholders and directors of SystemLink and had apparently agreed to Mr. Moran, Mr. Courtney investing and becoming directors. Subsequently Enterprise Ireland was invited to invest.

No evidence was given as to the existence of present whereabouts of the pre-2003 Register of Shares of Monard. Mr. Clibborn had the Register on 13th July 1995. Mr. Rea had arranged to have the Register reconstructed in 2003.

Mr. Rea had instructed Ernst and Young to recreate certain statutory books of Monard which were prepared on 11th December, 2003. No evidence was given as to what these instructions were or what papers had been given to Ernst and Young.

On 9th January, 2004, Messrs. Vaughan, Monard's accountants, wrote to Mr. Madigan confirming that they did not transfer the share to him and referred him to Mr. Rea as company secretary whom, they presumed had the Share Register.

Mr. Madigan said that he had spoke to Mr. Cotter of Vaughan's on 2nd December, 2003, who told him that Mr. Rea was not happy that Mr. Madigan owned 50% of Monard.

Mr. Madigan referred to his affidavit, filed 27th July 2004, in particular, at para. 41, that the first mention of a letter of trust arose in December 2003 when, he averred, that Mr. Rea decided "to get rid of him". He referred to a note of that call as follows:

> "I asked Eric [Cotter] to confirm that there was no verbal or trust document ever in relation to my shareholding in M.R. & D. [Monard] and he did so. I asked him if he would fax any documents that he had on file in relation to M.R. & D. and he said 'I had everything on the file except the documents of request for information which I had sent looking for same'. He said he had exhausted himself with Harry [Rea] trying to get him to see sense."

Mrs. Madigan had, on 14th May, 2008, obtained certified copies of returns made to CRO and both she and Mr. Madigan had referred to

some of these. In particular, reference was made to the return made up as to 31st December, 1998, which was present to CRO by Mr. Rea on 10th October 2001. It was noted "No AGM held". The issued ordinary share capital was stated to be held as on the 10th May after the annual general meeting for 1998 as follows:

Harry Rea	Ord	1	-1	31/12/1998	To Terry Madigan
			+1	31/12/1998	From Carol Long
Carol Long	Ord	0	-1	31/12/1998	To Harry Rea
Terry Madigan	Ord	1	+1	31/12/0998	From Harry Rea

In addition, Mr. Rea held 10 "A" ord shares which carried no voting rights. Trevor Crone, who had been a director from 1993 to 30th November, 1995, held 10 "B" ord shares. Eamon Heffernan, a director from 1993 to 30th November, 1995, also held 10 "C" ord shares and NEC Investments held 10 "D" ord shares. That remained the position with regard to all but the ordinary shares with voting rights.

Neither Trevor Crone nor any director of NEC Investments gave evidence.

An abridged financial statement for 69 months to 31st October, 1998 was filed on 28th January 1999. The directors were listed as Harry Rea and Ann Rea.

The relevant B1 returns to CRO from December 1998 to July 2007 are as follows:

RETURNS TO CRO 1998-2007 re-issued ordinary shares

Period up to Year end	Date Filed	Presenter	Ordinary Share Holders	Directors
30.12.1998	10.10.2001	Rea	Rea 1 Long 0 Madigan 1	H. Rea, A. Rea, T. Madigan
30.7.1999	20.10.2001	Rea	Rea 1 Madigan 1	H. Rea, A. Rea, T. Madigan
30.9.1999	30.3.2000	Key Co. Form.	H. Rea 1 A. Rea 1	H. Rea, A. Rea
30.4.2000	20.10.2001	Key Co. Form.	H. Rea 1 T. .Madigan 1	H. Rea, T. Madigan
31.7.2001	20.10.2001	Key Co. Form.	H. Rea 1 T. Madigan 1	H. Rea, T. Madigan
31.7.2002	12.1.2004	Rea	H. Rea 1 C. Long 1	H. Rea, D. Rea
31.7.2003	12.1.2004	Rea	H. Rea 1 C. Long 1	H. Rea, D. Rea
31.7.2004	11.11.2005	Rea	H. Rea 1 D. Rea 1	H. Rea, D. Rea
31.7.2005	11.11.2005	Rea	H. Rea 1 D. Rea 1	H. Rea, D. Rea
31.7.2006	30.5.2008	Rea	H. Rea 2	H. Rea, D. Rea
31.7.2007	30.5.2008	Rea	H. Rea 2	H. Rea, D. Rea

The first return up to 30th July, 1999, presented by Mr. Rea on 20th October, 2001, lists Mr. Madigan as an ordinary shareholder.

A second return made up to 30th December, 1999, presented by Key Company Formation Ltd. on 20th October, 2001, lists Harry Rea and Ann Rea as persons holding the issued ordinary shares. Carol Long is listed as having transferred one ordinary share to Ann Rea on 30th October 1998. The directors are listed as Harry Rea and Ann Rea.

The return is certified on 14th May, 2008, as being a document filed with the Registrar on 20th October 2001, ten days after Mr. Rea filed his return to CRO on 10th October 2001.

The first return presented by Mr. Rea does not include his wife, Ann Rea, as shareholder. Both the second return presented by Key Company Formation Ltd. and the returns for 1999 include Mrs. Rea and are consistent. Their returns for 2000 and 2001 list Mr. Madigan both as an ordinary shareholder and as a director.

Mr. Rea's two returns on 12th January, 2004, over two years after the previous return by Key Company Formation, include Carol Long as shareholder for 30th July, 2002 and 2003 and David Rea as shareholder for 30th July 2004. Some short time before those returns were made, Mr. Rea had lost trust in Mr. Madigan and with SystemLink. The issue of Mr. Madigan's share being held on trust also arose at that time.

The returns for 2002 and 2003 presented by Mr. Rea are inconsistent with his return presented on 10th October, 2001 for the year ending 31st December, 1998 which showed a share transfer by Carol Long to him and by him to Mr. Madigan on 31st December, 1998.

The Court notes that the return up to 30th September, 1999, presented by Key Company Formation Ltd. and filed on 30th March, 2000, listed Ann Rea as director and as the other ordinary shareholder while Mr. Rea's presentation to CRO five months earlier for 30th July, 1999, included Ann Rea as director, but not as a shareholder. Instead, Mr. Madigan was listed as a shareholder and director.

No evidence or explanation was given for the returns for 2006 and 2007 where Mr. Rea is listed as the holder of two ordinary shares.

In the absence of a Register of Shares, the Court can only rely on returns made to the Companies Office. Where these are inconsistent the Court must have regard to the oral evidence given by witnesses. Carol Long did not give evidence. Ann Rea did not give evidence of any involvement with the business of Monard but confirmed that Mr. Madigan was a shareholder. There was no evidence of directors' meetings in relation to transfer of shares being minuted. Monard did not have funds at the time to have secretarial or accounting services. Mr. Rea purported to make returns of accounts as secretary of the company and also purported to make returns as auditor.

Mr. Rea agreed that the issue in this litigation was the ownership of the second share in Monard. He both denied that he had executed a share transfer form either in 1998 or subsequently when Mrs. Madigan had drafted a share transfer form to be executed by him in relation to Ms. Long's share. Mr. Rea, in his cross-examination of the Madigans, put it to Mr. Madigan and, indeed, to Mrs. Madigan, that there had been alterations in the share transfer form which purported to have been signed by him. In evidence he accepted that it looked like his signature. In his evidence he referred to a complaint made to the Director of Corporate Enforcement and, indeed, to the Gardaí. Significantly, while he had engaged handwriting experts to deal with issues of documentation in relation to Enterprise Ireland's interest in SystemLink, the share transfer form with his signature was not referred to them for examination.

Mr. Rea also maintained that a share transfer form was to be accompanied by a declaration of trust and that as this was not signed by Mr. Madigan the share transfer was not registered. The Court notes Mr. Rea's evidence that this declaration of trust had been drafted by Eric Cotter. Significantly Mr. Cotter's evidence could not say whether a declaration had been drafted before December 2003 when relationships between the parties broke down irretrievably.

Mr. Cotter's evidence was that he had typed the declaration of trust but could not remember when he did so. He was not in a position to say that the declaration of trust was in existence prior to the 18th December, 2003 when he had advised Mr. Madigan that there was "no verbal or trust document".

Mr. Madigan stated that, in several conversations in late December 2003, with Shay Moran and himself, Mr. Cotter had never referred to having created such a document.

Mr. Madigan's note of a conversation with Eric Cotter on 2nd December, 2003 referred to Mr. Rea not being happy that Mr. Madigan owned 50% of Monard. This document was discovered by Mr. Madigan in his supplemental affidavit of discovery on 6th February 2009.

Mr. Rea agreed that he signed the CRO returns which listed Mr. Madigan as a shareholder.

In December, 2003, Mr. Rea had fallen out with the directors of SystemLink and appeared to have made an agreement with a competitor, Mr. Jim Tangley, of Kental Teoranta. On 10th December, 2003 at the Rochestown Park Hotel in Cork, at a meeting attended by Mr. Madigan, Mr. Moran, Mr. Cotter and Mr. Rea, the letter purported to deny the plaintiff's shareholding and unilaterally withdrew the company from its agreement with SystemLink.

Mr. Rea's reference in his letter to Mr. Madigan dated 16th December, 2003, to "the share was never transferred to you", "because you never signed the letter of trust" presupposes the existence of such a letter. In the absence of the Share Register the only evidence of the parties' positions re shareholding is Mr. Rea's return to CRO on 20th October, 2001.

The share transfer depends on an agreement, normally in the form of a share transfer form, the approval of the transfer by the Board and a registration of the transfer in the Share Register. The return to CRO is a reflection of the Share Register. The Revenue stamp is evidence of payment of tax on the transfer of the share.

The recreation of company registers created a few days earlier by Ernst and Young, accountants, on 11th December, 2003, seems to be at variance with returns to CRO which, as already seen, are themselves confusing.

On 12th May, 2004 Mr. Rea lodged documents with CRO being returns for the year ending 2001 and 2002 in which all references to Mr. Madigan were erased and Mr. David Rea (his son) was included as a director. The registers prepared by Ernst & Young on 11th December, 2003 indicated a transfer of shares from Carol Long to Harry Rea on 12th December, 1998. Carol Long remained registered as a shareholder in returns made subsequently by Mr. Rea personally.

The Court has had regard to the letter dated 16th March, 2004, sent by Mr. Rea to Mr. Madigan referring to Mr. Madigan's directorship of Monard having expired eighteen months earlier on 9th September, 2002, was based on the company's resolution dated 22nd December 1998. The Court is satisfied from the evidence of Mr. Madigan, who was returned as a director and shareholder for the year ending 30th April, 2000, as was Mr. Rea, that no such meeting had taken place. It is curious that this appears to be the only minutes of a general meeting of Monard.

The letter from Mr. Clibborn of 19th December, 2000, to Mr. Rea indicates that Carol Long, who was an employee of Clibborn's, was the nominee of share certificate No. 10 as from 13th July, 1995 and had executed a declaration of trust on that date. That share was transferred to Ann Rea on 30th October, 1998. The B1 returns to CRO dated 30th March, 2000 made by Mr. Rea as secretary showed him and Ann Rea as holders of one share each. There was no documentary evidence that Ann Rea had executed a declaration of trust.

The Court is satisfied that the transfer form had, indeed, been executed by Mr. Rea; and that there was no issue of a declaration of trust raised by Mr. Rea prior to December 2003. While there may indeed have been such a declaration by Carol Long who, the Court accepts, transferred her share to Mr. Rea who transferred it to Mr. Madigan on 31st December, 1998, according to the return to CRO. Even if this were not so the return by Key Company Formations for year up to 30th April, 2000, shows Mr. Madigan as the holder of the other issued ordinary shares.

Pending registration of the transfer the transferor holds the shares as nominee or trustee for the transferee. There is no evidence as to when the transfer was executed. In the absence of the Register of Members the Court can only rely on the returns made to the CRO which are evidence as to what the Register contains.

The Court is satisfied that the returns to the CRO, presented by Mr. Rea in relation to the transfer of Ms. Long's share to Mr. Madigan, are consistent with an agreement to transfer that share.

Even if the share transfer form had not been stamped nor, indeed, the register of members had not evidenced the transfer, the defendant is estopped from denying his actions in this regard. The issue of the registration of the transfer does not, in the Court's view, affect the agreement to transfer.

The Court has had regard to the consistency of evidence of Dr. Dieter Finkenstedt, the sales agent for SystemLink Ltd. who at the meeting with the parties in Dublin on 10th January, 2000 asked who owned the intellectual property and was told that the company owned it and that the company in turn was owned 50/50 by Mr. Rea and Mr. Madigan. On Mr. Rea's own returns to the CRO the agreement to transfer was effected on 31st December, 1998.

This was corroborated by the evidence of Shay Moran, and Mrs. Madigan.

The Court does not understand the distinction made by Mr. Rea that Dr. Finkenstedt's question in relation to the ownership of the company was "market based" or "market oriented". The clear evidence of Dr. Finkenstedt was that he was told Monard owned the intellectual property and Monard was owned equally by Mr. Rea and Mr. Madigan.

The Court observes that the documentation in relation to the company had been in arrears and, indeed, that returns to the Companies Registration Office were out of time and, indeed, somewhat contradictory, particularly in relation to the amended returns made on 12th January, 2004, by Mr. Rea after the breakdown in trust in December, 2003, in respect of years ending 31st July, 2002 and 2003.

While it is clear that returns made, prior to the emergence of the breakdown, are evidence of agreement to the transfer of the other share to Mr. Madigan.

Mr. Rea recognised this to be the net issue before the Court. If he had indeed made such returns to the CRO he said that he would put his hands up and leave it to the Court to decide the question of the ownership of the second share.

The Court is concerned in relation to the minutes of directors' meetings purporting to be those of annual general meetings in relation to the resignation of Mrs. Ann Rea as shareholder and the minutes in relation to Mr. Madigan holding the share interest for David Rea, Mr. Rea's son. This would appear to be inconsistent with Mr. Madigan holding the share on trust for Mr. Rea.

The Court is satisfied that the letter of 22nd March 2000, in relation to SystemLink's licence, referring to "any right or interest which we have granted", on the balance of probability relates to Monard. While the letter was agreed by Mr. Rea it does not explicitly refer to the earlier agreement regarding the shareholding in the company. Nonetheless, it seems to the Court that the assumption that the grantor of the licence agreement was Monard in respect of which both had an interest, is reasonable.

It is unclear whether Mr. Rea actually received the letter of 22nd March, 2000. His discovery, however, includes an unsigned letter of that date. Mr. Rea's uncontradicted evidence that he was not in Dublin on that day does not substantially affect the Courts finding.

The Court has had regard to the text message evidence of an agreement between Mr. Rea on behalf of Monard and J. Tangley on 6th December 2003, which was not controverted and which coincided with the breakdown of relationships with Mr. Madigan and, indeed, with SystemLink Ltd.

The Court accepts the evidence, which was not controverted, that Mr. Madigan had acted as director in relation to the affairs of Monard in relation to the agreement with SystemLink. No notification had been sent to him prior to 16th March, 2004, in relation to his ceasing to be a director.

The Court has carefully considered a document which purports to be the minutes of a meeting held on 22nd December, 1998. There was no evidence that the relevant secretarial and company documentation given to Ernst & Young in December 2003 contained such minutes.

I accept Mr. Madigan's evidence that the first he knew of his removal as a director was on 16th March, 2004 when he received those minutes.

The Court finds that it is unlikely that Mr. Madigan would have continued to be a director 18 months after 9th September, 2002, when David Rea attained his majority if such resolution had been passed. Moreover the Court notes that the resolution purports to be a meeting of the Board of Directors rather than a general meeting which is statutorily required to appoint directors.

The returns made to the CRO for the year ending 31st October, 2001, refer to financial statements approved on 7th January, 2004. The directors indicated for the financial year to October, 2003 are Mr. Rea and his son David Rea. Mr. Rea is included as chairman, managing director and secretary. The accountants' report on the unaudited financial statements dated 7th January, 2004, are signed by Mr. Rea as Rea & Associates, Accountants, as indeed are the abridged financial statements for the following financial year ending 31st October, 2002.

In his evidence in cross-examination, Mr. Rea accepted that he was not an accountant. The Court is satisfied that he had no entitlement to represent himself as such in CRO.

Whatever the disputes regarding the trading and related companies and Monard, it is clear that Mr. Rea had in addition, agreed with Mr. Madigan that he be a director of Monard to promote its interests including the negotiations with SystemLink of which, of course, both parties were the original shareholders and Mr. Rea continued to be a shareholder and employer. He agreed to and took the benefit of "Harry's Deal".

The Court is not satisfied that the transfer of the other ordinary share in Monard was in trust for Mr. Rea or his son. I accept Mr. Madigan's evidence in relation to the growth of SystemLink through outside investment of other shareholders and of Enterprise Ireland. I am satisfied that Mr. Rea was aware of this and had agreed and benefited from these developments. Royalties earned by Monard, albeit at the rate of 6% which Mr. Rea says he had not agreed to and which Mr. Madigan said that he was told, are held on account of Monard and enures to its benefit.

The position of Mr. Rea in this regard would appear to have been influenced by the need to retain Mr. Madigan and by pressures of family litigation.

The Court regards it as unhelpful that there were delays in relation to the requests of Mr. Madigan to file returns and to register the transfer of the share in the Register of Shares. Mr. Rea was also in breach of the requirements of the Companies Acts in failing to maintain a share register and indeed a minute book for Monard.

What is clear is that returns were made which, as already observed, evidenced the transfer of the other share to Mr. Madigan.

The Court is concerned in relation to the minutes of directors' meetings purporting to be those of annual general meetings in relation to the resignation of Mrs. Ann Rea as shareholder and the minutes in relation to Mr. Madigan holding the share interest for David Rea, Mr. Rea's son. This would appear to be inconsistent with Mr. Madigan holding the share on trust for Mr. Rea. The Court is not satisfied that such a meeting was, in fact, held.

The Court has already expressed a concern about the returns to the Companies Office purporting to be accompanied by an independent accountant on behalf of the company. Mr. Rea's explanation as to why he included himself as an independent accountant of the company does not excuse what is a breach of company law. The Court regards this as a further indication of lack of proper management and administration of the company.

The Court will, accordingly make a declaration that the plaintiff is beneficially entitled to 50% of the ordinary shares in Monard Research and Development Ltd.

The Court will also direct the first named defendant to register the transfer of that share in the Share Registry of Monard (Research and Development) Ltd.

The Court will also make a declaration that the plaintiff continues to remain a director of Monard (Research and Development) Ltd.

The Court will hear the parties as to whether, in the circumstances, it is necessary to make any consequential order in relation to the linked petition.